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**Congress of the United States**

Washington, DC 20510

February 11, 2004

The Honorable Kenneth Mead  
Inspector General  
U.S. Department of Transportation  
400 Seventh Street, S.W.  
Washington D.C. 20590

Dear Inspector General Mead :

We write you to request that you investigate the FAA's process for reviewing and approving the City of Chicago's proposed O'Hare Modernization Plan (OMP).

**I. BACKGROUND:**

Chicago is proposing to tear up the runways at O'Hare and to entirely re-build the airport with a different layout. Chicago claims that the new airport layout would increase O'Hare's capacity from 900,000 to 1.6 million operations a year. But Chicago's own studies conclude that the airport will become grid-locked with far fewer flights, and that delays at the projected OMP traffic levels will be worse than they are today -- more than twice the FAA's acceptable delay standard. Further, in order to accommodate the increase in projected annual passengers from 35 million to 70 million, Chicago will also have to double the terminal and gate capacity of the airport, expand the interstate highways leading into O'Hare and make substantial improvements to the mass transportation systems leading into and out of O'Hare.

According to the City's recently issued Master Plan, tearing up and re-building the runways alone will cost \$6.6 billion. Adding additional terminals, highway and public transit access, and ongoing capital improvements will bring the total cost of O'Hare expansion to at least \$15 billion (not including likely cost overruns). These costs would make it by far the most expensive airport development project in aviation history. To put it into perspective, the O'Hare expansion would cost nearly three times as much as the total cost of building the entire new Denver International Airport ("DIA"). And, DIA exceeded its initial cost projections by 180%.

The City has stated that it cannot proceed with the OMP without hundreds of millions of dollars of federal (AIP) grants. Indeed, the airlines have required that no bonds be issued until FAA issues Letter of Intent commitments of at least \$450 million (\$150 million for Phase 1 and

Comment	Response
1	Senator Fitzgerald and Congressman Hyde requested that the US Department of Transportation, Inspector General (OIG), investigate the FAA's process for reviewing and approving the City of Chicago's proposed O'Hare Modernization Program (OMP). FAA awaits the OIG report which is anticipated to be released in July 2005.

FROM US DOT/OST/Office of the General Counsel (FRI) 2.13.04 10:57/ST.10:56/NO.4861688286 P 1

v

The Honorable Kenneth Mead  
February 11, 2004  
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\$300 million for Phase 1C). Despite these federal funding prerequisites, Chicago is now requesting that the FAA approve, in isolation, its revised Airport Layout Plan for the \$6.6 billion OMP, which deals only with the configuration of the new runways. Once the City obtains ALP approval it has stated it will begin acquisition and demolition of the homes and businesses of the surrounding communities, even before the FAA has acted on AIP grant issues. The City apparently intends to seek AIP funding for the OMP and for the necessary landside and surface transportation improvements at a later time. This piecemeal approach is really an attempt to shield the OMP from critical cost-benefit review. The City is attempting to begin destruction and demolition of the surrounding communities before the FAA evaluates the economic merits of the project.

Given the magnitude of the stakes at issue, including massive requirements for federal funds, the FAA's decision requires more than piecemeal consideration. The FAA must examine the economic viability and cost-benefits of the project in the context of its current ALP review.

## II. THE DEL BALZO REPORT:

The communities of Bensenville and Elk Grove Village, Illinois, (the "Villages") adjoin O'Hare Airport to the west. They oppose the OMP and favor, as an alternative, the development of a supplemental regional airport to the south as first recommended by the FAA as far back as 1984. (See, FAA Record of Decision on the 1980's proposed O'Hare expansion: "Development of another air carrier airport to serve the Chicago Metropolitan Area will be studied as part of a State System Plan to be prepared by the Illinois Department of Transportation under a series of grants to be funded by the FAA's Airport Improvement Program.") The initial grant was issued in September 1984. The State has in fact used those funds to acquire the land for the development of a south suburban airport near Pootone.

The Villages have retained a highly respected aviation expert, former FAA Acting Administrator Joseph Del Balzo, as a consultant. After studying the OMP, Mr. Del Balzo made the following determinations:

- The OMP will not achieve claimed benefits; it will actually increase, not decrease delays and congestion.
- The OMP will not provide adequate capacity to meet the region's aviation growth needs, primarily due to airspace, not runway, constraints.
- The OMP will create serious safety risks.
- The OMP will be far too costly, will be economically unviable, will require more AIP funds than available, and would be too expensive for airlines in today's low cost environment.

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In addition, Mr. Del Balzo identified several fundamental flaws. For example, one significant failing of the OMP is that Chicago's class B airspace (which includes O'Hare, Midway, DuPage, Palwaukee and several other smaller airports and is already the busiest airspace in the country) is too congested to handle the City's projected seven hundred thousand additional operations per year. As a result of this and other findings, Del Balzo indicated that tearing up and rebuilding the runways at O'Hare would result in far less capacity enhancement than the City suggests and therefore would not be worth the cost or the ten-year disruption to air travelers. Del Balzo concluded that O'Hare could achieve an equivalent capacity increase far more quickly, with little or no disruption to the airport and for only a fraction of the cost by simply adding one additional runway within the existing airport footprint. (A copy of the Del Balzo study is attached as Exhibit "A".)

Two senior aviation leaders, David Hinson, former FAA Administrator, and Jonathan Howe, former Director General of the Airports Council International, jointly issued a public statement echoing Del Balzo's conclusions. (A copy of their statement is attached as Exhibit "B"). Hinson and Howe are independent aviation experts and neither has a contractual relationship with either the Villages or the City.

## III. CONCERNS ABOUT FAA PROCESS.

In light of Del Balzo's, Hinson's and Howe's conclusions that the City's plan is unworkable and that its benefits would not merit its costs or its years of disruption to Chicago aviation, we have several specific concerns about the FAA's procedure for reviewing the OMP.

First, by allowing the City to submit an application for approval of revisions to O'Hare's Airport Layout Plan ("ALP") before it completes the Master Plan and before it evaluates the cost-benefits and viability of the City's mega-billion dollar plan, the FAA appears to have turned the ordinary process on its head. Under the FAA's own Orders, the ALP is supposed to be the end result of a national and regional planning process, not the beginning. (See, Exhibit "C", which summarizes FAA's planning process requirements.) The FAA has already spent nearly \$15 million in AIP funds and authorized over \$220 million in PFC funds for master planning. The FAA's failure to require the City to complete a Master Plan (a process which has only just begun) before the FAA reviews and considers the ALP contravenes the FAA's own guidelines.

Second, contrary to its own requirements which mandate thorough and early public participation, the FAA and the City have kept the critical details of both the ALP and Master Planning processes secret. The FAA has refused to provide interested communities (which will be most impacted by the OMP) critical documents exchanged between FAA and the City, arguing that communications between the FAA and the City of Chicago may somehow be

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February 11, 2004  
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withheld as "intra-agency" communications under Exemption 5 of the Freedom of Information Act.

Third, thus far the FAA has limited debate on the ALP only to technical issues such as placement of navigation aids, runway lighting and location of runways and has refused to consider larger, more important threshold issues such as whether the Chicago airspace can handle 700,000 more flights per year, whether the OMP will increase rather than decrease delays, whether its costs would outweigh its benefits, and whether there are other more sensible, and less costly, alternatives.

Fourth, the FAA apparently is asking no questions about the financial viability of the OMP. Given that United Airlines, the main tenant at O'Hare, is in bankruptcy, has a \$7 billion unfunded pension liability, has defaulted on the special purpose bonds issued to finance its existing terminal and several other facilities at O'Hare, and is now suing the City of Chicago to enjoin it from enforcing its O'Hare Lease Agreements with United, see Exhibit D, (in re: UAL Corporation, et. al., complaint of Debtor-Plaintiff for Declaratory Judgment, filed September 18, 2003), the FAA's failure to consider the financial viability of the project is remarkable. Given that the project is so large that it will drain the lion's share of discretionary AIP funds for over a decade, leaving little money for other airports, the FAA's failure in this regard is incredible.

#### IV. REQUEST TO INVESTIGATE.

In light of the foregoing concerns we respectfully request that your office investigate the following specific issues:

1. Whether due process and the Administrative Procedure Act entitle interested parties to a fair, open and transparent administrative process, in which to meaningfully participate, including an objective and independent decision-making process, and access to all relevant information, documents, studies, forecasts and communications between the FAA and the City of Chicago on the City's ALP and funding requests?
- \* 2. Whether FAA should evaluate the financial viability of the proposed expansion, including a benefits-cost analysis as required by the AIP law (49 U.S.C. §47115(d)), before taking action on the ALP request, in light of the fact that the FAA is on notice that hundreds of millions of dollars of federal AIP funding is required as prerequisite to proceeding with the OMP?
- \* 3. Whether the requirements for System and Master Planning are being met, including whether FAA should require completion of the Master Planning process before it considers the City's ALP application as required by 49 U.S.C. §§47010 (g), 47103,

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47106, FAA Order 5100.38B, and FAA Advisory Circulars AC No. 150/5070-6A, AC No. 150/5050-3B, and AC No. 150/5070-6?

4. Whether the ultimate limiting capacity factor for O'Hare is airspace, not runways, and therefore whether the limited capacity expansion achievable at O'Hare due to airspace constraints justifies the billions of dollars of costs and long-term passenger disruptions?

5. Whether the proposed OMP conforms to the FAA's 1984 Record of Decision on O'Hare, which stated that expansion of O'Hare beyond its then existing runway configuration would be subject to an FAA funded State System Plan, which State plan concluded that O'Hare's runways should not be expanded and instead new capacity should be constructed at a new south suburban airport?

Thank you for your prompt attention to this matter.

Sincerely,

  
Peter G. Fitzgerald  
United States Senator,  
Illinois

  
Henry J. Hyde  
United States Representative  
Sixth District of Illinois

PGF/HJH/dg

Enclosures

050222\_154

RICHARD J. DURBIN  
ILLINOIS  
COMMITTEE ON APPROPRIATIONS  
COMMITTEE ON THE JUDICIARY  
COMMITTEE ON RULES  
AND ADMINISTRATION  
ASSISTANT DEMOCRATIC  
LEADER

United States Senate  
Washington, DC 20510-1504

February 22, 2005

The Honorable Marion Blakey  
Administrator  
Federal Aviation Administration  
800 Independence Avenue, S.W.  
Washington, DC 20590

Dear Administrator Blakey:

Thank you for the opportunity to comment on the Federal Aviation Administration's (FAA) Draft Environmental Impact Statement for the O'Hare Modernization Program (OMP). I want to commend you and your staff for meeting the Agency's timeline for release of this important document. I look forward to working with you as the modernization of Chicago's O'Hare International Airport moves forward.

You and I have had numerous opportunities to discuss the vital role that O'Hare plays in our national aviation system. In my opinion, the OMP proposed by the City of Chicago is the best solution for addressing the issues of delay reduction and capacity enhancement at this key link in our national network. I support this plan as the best way to allow the airport to operate more efficiently and safely -- a goal that is not only important to the Chicago region but is also in the national interest.

The OMP would update the Airport's intersecting airfield into a more modern parallel configuration. The benefits of this restructuring would affect travelers, airlines, and airports all across the country. In order to realize these benefits, it is critical to have the runways in Phase One come on-line as soon as possible. To that end, and as we have discussed, the City of Chicago needs to be able to break ground on this project as soon as possible to take full advantage of the 2005 construction season.

As the FAA moves forward on this critical aviation infrastructure project, please keep the above mentioned information in mind.

Thank you for your continued leadership on this important project.

Sincerely,



Richard J. Durbin  
United States Senator

Cc: Mike MacMullen, FAA Hearing Manager

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(312) 363-4062  
636 SOUTH EIGHTH STREET  
SPRINGFIELD, IL 62703  
(217) 492-4062  
701 NORTH COURT STREET  
MARION, IL 62959  
(313) 956-4812  
durbin.senate.gov

Comment	Response
1	The FAA appreciates the Senator's comments and looks forward to working with him in the future.
2	The FAA notes the Senator's comments. FAA has identified Alternative C (OMP) as the Preferred Alternative in the Final EIS.
3	The FAA notes the Senator's comments.  In accordance with the NEPA process, the FAA makes its decision in a Record of Decision (ROD). The ROD may not be issued until a minimum of 30 days following the issuance of the Final EIS. FAA will ensure that its decision-maker is fully apprised of all comments pertaining to both the Draft and Final EIS's. All issues will be taken into account prior to the issuance of a ROD. Although the FAA has released a schedule indicating a ROD will be issued in September 2005, the FAA will not issue a ROD until the Agency's decision-maker is satisfied that all comments submitted as a result of the Draft and Final EIS or during public review have been thoroughly evaluated and satisfactorily addressed.
4	The Senator's comments are acknowledged. The FAA will keep the Senator's office apprised as the NEPA process is completed.

Feb-23-05 04:07pm From:  
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FAA-050225-001  
 T-024  
 512 CANNON HOUSE DRIVE BUILDING  
 (202) 238-3271

**Congress of the United States**  
**House of Representatives**  
 Washington, DC 20515-1308

February 23, 2005

The Honorable Marion Blakey  
 Administrator  
 Federal Aviation Administration  
 800 Independence Avenue, Southwest  
 Washington, District of Columbia 20590

Dear Administrator Blakey:

As the Representative of Illinois' 8<sup>th</sup> Congressional District, I appreciate the opportunity to comment on the Federal Aviation Administration's (FAA) Draft Environmental Impact Statement for the O'Hare Modernization Program (OMP). I want to commend you and your staff for your hard work in meeting the Agency's timeline for release of this important document.

O'Hare International Airport plays a vital role in our national aviation system. I strongly believe that the City of Chicago's plan to revitalize O'Hare is the best solution to addressing the airport's issues of delay reduction and capacity enhancement. The plan will allow for more efficient and safe operation of O'Hare—an important goal for the people of my district, the Chicago region and the nation.

As you know, the City's plan proposes to realign the airport's intersecting runways into a more modern parallel configuration. Once the program is underway and ultimately complete, the result will be a more reliable, dependable experience for passengers, airlines and airports throughout the country. To begin to realize these benefits, it is critical that the project move forward as soon as possible. To that end, I encourage the FAA to work with the City of Chicago to enable them to break ground on Phase I of the project as quickly as possible in order to utilize the 2005 construction season.

Thank you for your continued leadership on this important project, and I look forward to working with you in the future.

Sincerely,

*Melissa Bean*  
 Melissa Bean  
 Member of Congress

Cc: Mike MacMullen, FAA Hearing Manager

PRINTED ON RECYCLED PAPER

Comment	Response
1	The FAA appreciates the Congresswoman's comments.
2	The FAA notes the Congresswoman's comments. FAA has identified Alternative C (OMP) as the Preferred Alternative in the Final EIS.
3	The FAA notes the Congresswoman's comments.  In accordance with the NEPA process, the FAA makes its decision in a Record of Decision (ROD). The ROD may not be issued until a minimum of 30 days following the issuance of the Final EIS. FAA will ensure that its decision-maker is fully apprised of all comments pertaining to both the Draft and Final EIS's. All issues will be taken into account prior to the issuance of a ROD. Although the FAA has released a schedule indicating a ROD will be issued in September 2005, the FAA will not issue a ROD until the Agency's decision-maker is satisfied that all comments submitted as a result of the Draft and Final EIS or during public review have been thoroughly evaluated and satisfactorily addressed.
4	The Congresswoman's comments are acknowledged. The FAA will keep the Congresswoman's office apprised as the NEPA process is completed.

050223\_138 10:11 FAX

BARACK OBAMA  
ILLINOIS

United States Senate  
WASHINGTON, DC 20510

February 23, 2005

The Honorable Marion Blakey  
Administrator  
Federal Aviation Administration  
800 Independence Avenue, S.W.  
Washington, DC 20590

Dear Administrator Blakey:

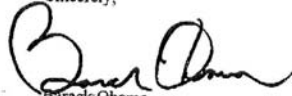
Thank you for the opportunity to comment on the Federal Aviation Administration's (FAA) Draft Environmental Impact Statement (DEIS) for the O'Hare Modernization Program (OMP). I want to commend you and your staff for meeting the Agency's timeline for release of this important document.

As you know, O'Hare International Airport plays a vital role in our national aviation system. I believe strongly that the City of Chicago's proposal is the solution to addressing the issues of delay reduction and capacity enhancement at O'Hare. I endorse this plan as the best way to allow the airport to operate more efficiently and safely -- a goal that is not only important to the people of the Chicago and Illinois, but is also key to having an efficient national aviation system.

The OMP will update the Airport's intersecting airfield into a more modern parallel configuration. The benefits of this restructuring will affect travelers, airlines and airports all around the country. To begin to realize these benefits, it is critical to have the runways in phase one come on-line as soon as possible. To that end, I encourage the FAA to work with the City of Chicago to enable them to break ground on this project as soon as possible in an effort to utilize as much of this year's construction season.

Thank you for your continued leadership on this important project, and I look forward to working with you toward its completion.

Sincerely,

  
Barack Obama  
United States Senate

Cc: Mike MacMullen, FAA Hearing Manager

FAA-050301-003

COMMITTEE:  
ENVIRONMENT AND  
PUBLIC WORKS  
FOREIGN RELATIONS  
VETERANS' AFFAIRS

Comment	Response
1	The FAA appreciates the Senator's comments. The FAA is working diligently toward a decision by September 2005.
2	The FAA notes the Senator's comments. FAA has identified Alternative C (OMP) as the Preferred Alternative in the Final EIS.
3	The FAA notes the Senator's comments.  In accordance with the NEPA process, the FAA makes its decision in a Record of Decision (ROD). The ROD may not be issued until a minimum of 30 days following the issuance of the Final EIS. FAA will ensure that its decision-maker is fully apprised of all comments pertaining to both the Draft and Final EIS's. All issues will be taken into account prior to the issuance of a ROD. Although the FAA has released a schedule indicating a ROD will be issued in September 2005, the FAA will not issue a ROD until the Agency's decision-maker is satisfied that all comments submitted as a result of the Draft and Final EIS or during public review have been thoroughly evaluated and satisfactorily addressed.
4	The Senator's comments are acknowledged. The FAA will keep the Senator's office apprised as the NEPA process is completed.



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
CHICAGO DISTRICT, CORPS OF ENGINEERS  
111 NORTH CANAL STREET  
CHICAGO, ILLINOIS 60606-7206



Technical Services Division  
Regulatory Branch  
200301000

FEB 25 2005

SUBJECT: Proposal to Discharge Materials into 153 Acres of Wetlands and Waters of the United States for Development of O'Hare Modernization Program Located at O'Hare International Airport in Chicago, Cook and DuPage Counties, Illinois

Michael MacMullen  
Department of Transportation, Federal Aviation Administration  
Chicago Airport's Division Office  
2300 East Devon Avenue  
Des Plaines, Illinois 60018

Dear Mr MacMullen:

This letter is to provide comment on the Draft Environmental Impact Statement (DEIS) for the above-referenced project. As a cooperating agency in the review of the DEIS for the project, the U.S. Army Corps of Engineers (USACE) has agreed to adopt and incorporate the final Environmental Impact Statement (EIS) into our decision making process with respect to key issues such as the 404(b)(1) Guidelines, public interest factors, site constraints, etc. This office concurs that there are no less damaging alternatives to construct the project, and that the proposed alternative site configurations will directly impact a majority of the on-site waterways and wetlands.

1

In addition, this office will also work in cooperation with other permitting agencies such as the Illinois Environmental Protection Agency (IEPA), the Illinois Department of Natural Resources, and the Illinois Historic Preservation Agency (IHPA) in the review of the DEIS. This coordination will facilitate early consideration of key issues and an understanding of the proposed actions and associated environmental impacts.

2

Comment	Response
1	The FAA notes and appreciates the Army Corps' acting as a cooperating agency on the EIS and their concurrence on the alternatives stating that there "are no less damaging alternatives to construct the project..."
2	The FAA appreciates the Army Corps' efforts on this project and acknowledges the Corps' significant interaction and coordination with the other agencies of the Mitigation Review Team (MRT). The MRT is comprised of the Army Corps, USEPA, USFWS, and IEPA.

If you have any questions, please contact Kathy Chernich of the Regulatory Branch,  
telephone number (312) 846-5531.

Sincerely,  
  
Leesa A. Beal  
Chief, East Section  
Regulatory Branch

Copies Furnished:

O'Hare Modernization Program, Executive Director (R. Andolino)  
Illinois Environmental Protection Agency (Yurdin)  
Illinois Department of Natural Resources (Schanzle)  
Illinois Historic Preservation Agency (Haacker)



050328\_01

**United States Department of the Interior**

FISH AND WILDLIFE SERVICE  
Chicago Ecological Services Field Office  
1250 South Grove Avenue, Suite 103  
Barrington, Illinois 60010  
Phone: (847) 381-2253 Fax: (847) 381-2285

IN REPLY REFER TO:  
FWS/AES-CIFO/5-0828

March 28, 2005

Col. Gary E. Johnston  
District Engineer  
U.S. Army Corps of Engineers  
Chicago District  
111 N. Canal Street, 6<sup>th</sup> floor  
Chicago, Illinois 60606-7206

Attention: Kathy Chernich  
CELRC-TS-R

Dear Colonel Johnston:

This responds to your Public Notice (PN) and Supplemental Public Notice (SPN) seeking comments on application #200301000 submitted by the City of Chicago, Department of Aviation. The applicant seeks authorization for the development of the O'Hare Modernization Program. The proposed activities are located at O'Hare International Airport, Cook and DuPage Counties, Illinois (Sections 4,5,6,7,8,9,16,17, and 18, T41N, R10E).

According to the information provided to our office, the applicant would impact 153 acres of wetland and waters of the U.S. for the development of the O'Hare Modernization Program. The applicant proposes to provide compensatory mitigation for the impacts by providing 414 acres of mitigation credit at various sites, preferably in the Des Plaines River Watershed.

We have provided comments to the Federal Aviation Administration (FAA) for the O'Hare Modernization Draft Environmental Impact Statement (DEIS). Those comments referred to the overall mitigation for the O'Hare Modernization Program. These comments will focus on the selection of mitigation sites for the proposed impacts at O'Hare.

We have reviewed the information included in your PN and SPN. Several mitigation proposals have been submitted by the City and we have reviewed these proposals as part of the Mitigation Review Team (MRT). Of the proposals submitted, the MRT selected six potential sites from a list of 12 mitigation sites (on a preliminary basis only) for further review. The mitigation sites chosen were: Neal Marsh, Stockbridge, Heron Creek, Buffalo Creek, Manhattan Creek, and Lily

Comment	Response
1	This letter is included for information purposes only. The FAA notes that this letter was received by the United States Army Corps of Engineers (USACE) in response to the application for the Section 404 permit by the City of Chicago.

Cache Wetland Bank. Mitigation for wetland impacts in DuPage County is proposed to occur at the West Branch site located in the DuPage Watershed.

After a recent field tour on March 14, 2005, the number of potential sites was narrowed to three (Neal Marsh, Heron Creek, and Lily Cache Wetland Bank). Stockbridge was deemed unsuitable because the MRT concluded that the riparian corridor restoration was not needed (as the corridor was in fairly good condition for an urban stream). Furthermore, the MRT felt that the proposed restoration, enhancement, and stream work would not offset wetland impacts at O'Hare. Buffalo Creek was eliminated because it is part of the pilot studies for the Upper Des Plaines Phase II project. Manhattan Creek was deemed unsuitable because the applicant removed it from the proposal list.

Issues with the Lily Cache Wetland Bank being used as a mitigation site have been resolved and the bank restoration would result in approximately 62 acres of mitigation credit. Neal Marsh has promising restoration potential; however, issues regarding the use of a sheet pile dam (as noted in the proposal), the filling of an existing pond, and the feasible amount of credits which can be generated from the site still need to be resolved. The Heron Creek site also looks promising; however, issues involving the amount of credit sought for upland buffer and the feasible amount of credits which can be generated from the site still need to be resolved. Mitigation at Neal Marsh and the Heron Creek site would result in approximately 85 acres of mitigation credit (40 acres and 45 acres, respectively) based on the minimum amount of credits proposed. Therefore, the City of Chicago currently has a total of 147 acres of credits (assuming that all issues are resolved and the amount of credits which can be generated from the site are accurate).

As noted in our comments on the DEIS, we recommend that the palustrine forested wetlands (PFO) onsite be properly identified (as they were in the original determination performed by Harza Environmental Services in 2000) and that these wetlands be mitigated at higher mitigation ratios (e.g., 3.0:1.0). With the proper identification of the PFO wetlands onsite, the amount of credits required for the PFO wetlands (in Cook County) would result in up to 21.5 additional credits. This would increase the required number of mitigation credits for Cook County from 283 credits to 304.5 credits. Therefore, the City of Chicago would need 157.5 additional credits for mitigation. We had also recommended to FAA that the isolated wetlands in Cook County be mitigated at a 1.5:1 ratio. This would increase the recommended number of mitigation credits for Cook County up to an additional 20 credits, and increase the total to 177.5 additional credits.

Proposals for all the sites (not including the West Branch site) were preliminary and lacked the necessary information to make final determinations on their mitigation potential. We therefore recommend that all pertinent site information such as site concepts, wetland delineations, areas proposed to be created, restored, and/or enhanced, proposed mitigation ratios, etc. be provided for the remaining sites and other supplemental mitigation sites that are provided for review by the MRT.

Currently, we believe the City of Chicago is substantially short of the amount of mitigation necessary to offset impacts in Cook County. The Service is willing to work with the City of Chicago, FAA, the Corps of Engineers and others to develop a strategy for identifying additional

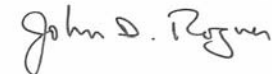
mitigation sites that would fully compensate for impacts.

Based on the information provided in your submittal and a review of our records, we concur that the project is not likely to adversely affect any federally threatened or endangered species or adversely modify critical habitat of such species. This precludes the need for further consultation in accordance with section 7 of the Endangered Species Act of 1973, as amended. Should project modifications or new information indicate that endangered or threatened species may be affected, consultation with the Service should be initiated.

This letter provides comment under the authority of, and in accordance with, the provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*) and the Endangered Species Act of 1973, as amended (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*).

If you have any questions, please contact Mr. Shawn Cirton at 847/381-2253, ext. 236.

Sincerely,



John D. Rogner  
Field Supervisor

cc: IDNR, Schanzle  
USEPA, Elston  
IEPA, Grady  
FAA, MacMullen

04/06/2005 15:36 FAX 847 294 7046

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

APR 06 2005

REPLY TO THE ATTENTION OF  
R-19J

Mr. Philip Smithmeyer  
Chicago Airports District Office Manager  
Federal Aviation Administration, Chicago Airports District Office  
2300 East Devon Avenue  
Des Plaines, Illinois 60018

Re: Comments on the O'Hare Airport Modernization Draft Environmental Impact Statement (DEIS), Cook and DuPage Counties, Illinois, EIS No. 050018

Dear Mr. Smithmeyer:

In accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act, the United States Environmental Protection Agency (EPA) Region 5 has reviewed the O'Hare Airport Modernization Draft Environmental Impact Statement (DEIS). The Federal Aviation Administration (FAA) evaluated several O'Hare build alternatives in detail in the DEIS but has not identified a preferred alternative.

EPA began working with FAA on O'Hare airport issues prior to July 2002, when FAA published a notice of intent to issue an environmental impact statement and a scoping notice. O'Hare's location in the Midwest, its role as a dual-hub airport with a high percentage of connecting passengers, and its large role providing service to the U.S.'s third largest metropolitan area magnify the impact of the delay problems that the airport experiences. Delays at O'Hare often have a ripple effect across the National Airspace System, especially in poor weather conditions. The proposed project is intended to (1) address the projected needs of the Chicago region by reducing delays at O'Hare, thereby enhancing the capacity of the National Airspace System, and (2) ensure that existing and future terminal facilities and supporting infrastructure can efficiently accommodate airport users. We believe the FAA and the sponsor have made a credible case for the need for action to alleviate the problems at O'Hare.

We have had discussions with FAA regarding FAA's approach to the alternatives analysis, including how the use of other airports would be evaluated. We agree with FAA's approach and decision for retaining the three O'Hare build alternatives—Alternative C (the City of Chicago's proposed alternative), Alternative D, and Alternative G—for detailed evaluation. Additionally, the EPA has worked with FAA on scoping the needed impact analyses for evaluating air and water quality and, to a limited extent, noise.

Comment	Response
1	The FAA has identified Alternative C as the preferred alternative in this Final EIS within <b>Section 3.7</b> of the FEIS.
2	FAA appreciates the comment and USEPA's efforts on the EIS to date. FAA notes the USEPA's comments stating, "[d]elays at O'Hare often have a ripple effect across the National Airspace System, especially in poor weather conditions," and "the FAA and the sponsor have made a credible case for the need for action to alleviate the problems at O'Hare."
3	The FAA notes and appreciates USEPA's agreement with the "FAA's approach and decision for retaining the three O'Hare build alternatives...for detailed evaluation."  The FAA appreciates USEPA's input on the air quality, water quality and noise exposure analysis. In addition, the FAA would like to note that USEPA participated in the wetlands process through the Mitigation Review Team.

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Our environmental concerns have been summarized in two general categories: impact analysis and mitigation measures. Our detailed comments are enclosed.

#### Impact Analysis

The DEIS includes substantial analysis of environmental impacts associated with O'Hare modernization alternatives, acknowledging impacts that the build alternatives will have in the areas of air quality, water quality, wetlands, noise, and environmental justice. We commend FAA for this analysis, and we recommend that FAA undertake selected additional analyses to fully disclose impacts. We recommend that the FEIS include:

- A General Conformity Analysis.
- A fine particulate matter (PM<sub>2.5</sub>) analysis.
- An expanded environmental justice analysis including other impact categories, such as air quality.

#### Mitigation Measures

We recommend that the FEIS evaluate mitigation options in more detail. The DEIS disclosed some mitigation options that may be considered, but did not evaluate them for their effect on reducing O'Hare's environmental footprint. The DEIS lacks specific mitigation commitments to address significant environmental issues. We recommend the development and implementation of a comprehensive mitigation plan. The FEIS should include the following mitigation measures that would reduce the environmental impact of the build alternatives:

- Specific air mitigation measures, including a comprehensive diesel emissions reduction program and measures to address hazardous air pollutants (HAP) emissions from aircraft taxiing and idling.
- The use of higher mitigation ratios to offset impacts to wooded wetlands.
- A detailed evaluation of specific noise mitigation measures and a timeline for implementation of those measures.

We note that the City of Chicago has developed several key documents to guide the O'Hare Modernization Program (OMP) work, including the Sustainable Design Manual and drafts of a Green Airport Initiatives Environmental Best Management Practices (BMP) Manual. We commend the City of Chicago for undertaking this effort. We strongly recommend that the FAA work with the City of Chicago to minimize impacts from the proposed project should one of the build alternatives move forward. We also recommend that commitments to implement specific green design, construction, and operation practices be included in the FEIS. We offer our assistance to work with you to help you achieve your goals.

O'Hare has the opportunity to be a leader in green airport design, construction, operation, and maintenance. We recommend that the City of Chicago consider implementation of an Environmental Management System (EMS). We believe the elements of an EMS, such as planning, goal-setting, program implementing, measuring progress, and corrective action, would set the stage for O'Hare becoming a model green airport. An EMS would also provide a mechanism to track long-term mitigation measures associated with this project. We believe that this approach is consistent with the City's environmental philosophy and practice in promoting green initiatives.

Comment	Response
4	<p>The Draft General Conformity Determination was published on May 18, 2005. The Final General Conformity Determination is provided in the Final EIS (see <b>Appendix J</b>).</p> <p>FAA has included an emissions inventory and dispersion modeling for PM 2.5 in the Final EIS, see <b>Section 5.6</b>.</p> <p>With respect to the USEPA request regarding environmental justice analysis, please refer to the FAA responses to comments 44-48 of this letter.</p>
5	<p>The project Sponsor (the City of Chicago) has committed to emission reduction measures including measures that would reduce emissions from off-road diesel construction equipment and hazardous air pollutants. The level of reduction from the measures has been quantified and is presented in <b>Section 5.6</b> of the Final EIS. No new specific project-related measures have been proposed to reduce aircraft-related emissions during the taxi or idle operational modes. However, there is an existing Airline Transport Association (ATA) policy to reduce idling time to the best of airlines' capabilities. In addition, a City's Sustainable Design Manual has been adopted, and it is referenced in <b>Section 5.6.5</b>.</p> <p>Notably, the National Aeronautic and Space Administration (NASA) and various aircraft engine manufacturers are working together to produce more efficient engines which should reduce overall aircraft-related emissions in the future throughout the U.S.</p> <p>At FAA's urging, the City has agreed to monitor green airport design, construction, operation, and maintenance activities. The FAA will oversee the City's progress with regard to these efforts and tracking the implementation long-term mitigation measures. While this is not a formal EMS, it would provide essentially the same purpose, albeit in a less formal manner. Formal mitigation commitments on this and other matters will be finalized in the anticipated Record of Decision.</p>

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Based on our review of the information provided in the DEIS and the comments we have provided on air quality, wetlands, water quality, noise, environmental justice, and alternatives evaluation, we have rated the DEIS as EC-2. The "EC" means that we have environmental concerns with respect to the proposed action, and the "2" indicates that additional information needs to be provided in the Final Environmental Impact Statement (FEIS) to alleviate these environmental concerns. Our rating applies to each of the build alternatives presented in the DEIS. We have enclosed a summary of EPA's rating system under NEPA.

Thank you for the opportunity to comment on the DEIS for this project. We are confident that by continuing to work closely and collaboratively with FAA and the City of Chicago, our concerns will be addressed and reflected in the forthcoming FEIS and Record of Decision. We are willing to meet and discuss our concerns with you. If you have any questions, please contact me. The staff person assigned to this project is Sherry Kamke; she can be reached at (312) 353-5794 or via email at kamke.sherry@epa.gov.

Very truly yours,



Bharat Mathur  
Acting Regional Administrator

Enclosures (2)

- 1) EPA's Detailed Comments on the DEIS
- 2) EPA's Summary of NEPA Rating Definitions and Followup Actions

Comment	Response
6	Comment noted. The EC-2 rating is not an adverse rating within USEPA's definition of that term and is a very good rating for a project of this complexity and magnitude. It is FAA's understanding that the principle reason for USEPA's environmental concerns relates to that agency's request for more specificity in the definition of project-related mitigation. As requested by USEPA, mitigation and emission reduction measures are described in greater detail in the Final EIS. The FAA will continue to work closely with the USEPA through the Record of Decision so that all of the USEPA's comments are fully addressed.
7	Comment noted. The FAA appreciates USEPA's comments.

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**Comments on the O'Hare Modernization Draft Environmental Impact Statement  
(DEIS) Cook and DuPage Counties, Illinois**

**Air Quality****Criteria Pollutants**

We note that FAA intends to address the General Conformity requirements in a separate document rather than in the DEIS and that FAA expects the General Conformity documentation to be completed in Spring 2005. We look forward to reviewing the General Conformity documentation when it is prepared. Please note that the General Conformity documentation requires a public comment review period and that the General Conformity determination must be completed prior to a Record of Decision being issued.

**Meteorological Data and Modeling**

In Appendix J, the DEIS states that one year of meteorological data was initially selected because it represented worst-case weather conditions. (The EPA's Guideline of Air Quality Models states that five years of meteorological data should be used to ensure that the variability in weather conditions is adequately captured.) It is EPA's understanding that the year 1990 was selected after a screening analysis indicated that it would produce the highest modeled predictions among the five years of data examined. Also, the report states that if the results of the modeling were within 10% of the National Ambient Air Quality Standards (NAAQS), the modeling would be conducted with the additional four years of data to ensure that the highest concentrations were predicted. The results of this additional modeling, as well as the results of the screening analysis, could not be found in the DEIS. The results of the screening analysis and the results from the remaining four years of meteorological data need to be reviewed to determine if alternative variability has been adequately considered. We are unable to verify that the year chosen represents the worst case for all alternatives. The results from the screening analysis should be included in the FEIS.

Appendix J in the DEIS states that the receptor grid resolution is roughly 1000 feet around the perimeter of the property and that additional receptors were placed within the property as well as in areas of maximum predicted concentrations. It is not clear where the additional, discrete receptors were placed to ensure reasonable characterization of the peak concentrations. Standard practice with regulatory modeling is to use 100 meters or less spacing at the fence line. Modeling should be run using 100-meter receptor spacing, and modeling results should be included in the FEIS.

**Carbon Monoxide**

As noted in Table 5.6-23, the maximum carbon monoxide (CO) concentration for Alternative A (No Action) is 9.0 parts per million (ppm) at the intersection of Mannheim Road and Lawrence Avenue. The CO NAAQS eight-hour standard is 9 ppm. All of the Build Alternatives (Alternatives C, D, and G) include a project that would add an exclusive southbound left turn lane at this location, bringing the 8-hour concentration down to 7.1 ppm. Although the DEIS indicates that the predicted eight-hour concentrations of carbon monoxide are not predicted to exceed the NAAQS, the levels could be close enough to cause

Comment	Response
8	The Draft General Conformity Determination was published on May 18, 2005. The public comment period began on May 18, 2005 and ended on June 20, 2005. The Final General Conformity Determination is provided in the Final EIS (see <b>Appendix J.3</b> ). USEPA provided comments on the Draft General Conformity Determination, and these comments have been addressed in the Final General Conformity Determination.
9	The results of the screening test to determine which, of the five years of data evaluated, resulted in the greatest concentrations of pollutants is provided in <b>Appendix J</b> of the Final EIS. To be conservative, receptors were placed at the airport property line at approximate intervals of 10 degrees (see <b>Exhibit J.2-3</b> of the Final EIS). Notably, some receptors were not placed at exact 10 degree intervals because, based on the location of certain sources (such as runway ends), the relocation of these receptors provided even more conservative results. The placement of the discrete receptors on the airport property (terminal curbsides and shuttle bus curbside) was agreed to by USEPA in the FAA's air quality protocol, and the placement is illustrated on <b>Exhibit J.2-3</b> of the Final EIS.

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a violation of the CO standard under the No Action alternative. FAA should address measures that will be considered to avoid a potential violation of the CO standard if the No Action alternative were selected.

**Particulate Matter- 2.5 microns or less (PM<sub>2.5</sub>)**

On January 5, 2005, the Chicago metropolitan area was designated as nonattainment for the PM<sub>2.5</sub> NAAQS. This designation will be effective on April 5, 2005. The State of Illinois is required to develop a plan to address the PM<sub>2.5</sub> NAAQS by April 2008. Throughout Chapter 5.6 of the DEIS, all tables entitled, "Airport Related Emissions Inventories" fail to include PM<sub>2.5</sub> emissions. Because this project is located in the Chicago PM<sub>2.5</sub> nonattainment area, PM<sub>2.5</sub> emissions need to be included to evaluate different alternatives and potential mitigation measures.

**Particulate Matter – 10 microns or less (PM<sub>10</sub>) and PM<sub>2.5</sub>**

In Appendix J, p. J-48, the estimation methodology for particulate matter (PM) emissions from aircraft engines is described. That method, an acknowledged interim approach, is FAA's first-order approximation (FOA): Emission Index Particulate Matter (EIPM) = 0.6 x SN, where SN is the smoke number. We remain concerned that the approximation does not include the volatile portion of particulate matter emissions. Further, this methodology is not consistent with EPA's quantification for other mobile PM sources. The NAAQS for PM is based on a consideration of both volatile and non-volatile PM; for health effects both must be considered. Initial results from recent testing at the National Aeronautics and Space Administration (NASA) Dryden Flight Research Center suggest that the PM emissions contain a significant volatile component. EPA and FAA participated in and helped to fund this NASA research. This under-accounting, which could potentially underpredict the total PM emissions from aircraft engines, should be mentioned in the FEIS. From FAA's air quality analysis, it does not appear that aircraft are a major contributor to overall PM emissions specifically in the vicinity of O'Hare under the various scenarios and Alternatives, but a brief sensitivity analysis should be undertaken. FAA should present different approaches that illustrate the range of estimates available for the PM aircraft contribution. FAA could apply EPA's methodology for our 2002 National Emissions Inventory, or other methods such as including early information from NASA Dryden or other recent testing that would show that particulate matter from aircraft contains more than only the black carbon component.

Further, with respect to PM<sub>2.5</sub> and the above-mentioned PM emissions estimation, recent literature, test data, and the FAA report, "A Review of Literature on Particulate Matter Emissions from Aircraft" all suggest that almost all PM emissions from aircraft engines are PM<sub>2.5</sub>. EPA will be using a PM<sub>2.5</sub> fraction of 97.6 percent in the aircraft engine portion of its 2002 National Emissions Inventory. As noted above, there is no PM<sub>2.5</sub> component to the Air Quality section of the DEIS (outside of construction emissions). The FEIS should include these estimations when analyzing for the contributions that aircraft engines make to PM<sub>2.5</sub> and PM<sub>10</sub>.

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Comment	Response
10	FAA has identified Alternative C (OMP) as the preferred alternative in the Final EIS. This comment is noted.
11	<p>FAA's air quality analyses were performed in accordance with established and industry-accepted practices, and all requirements of NEPA have been satisfactorily addressed in FAA's analysis. The Draft EIS included an emissions inventory and dispersion modeling for PM<sub>10</sub>. The Draft EIS also included construction-related data for PM<sub>2.5</sub>, which is a subset of PM<sub>10</sub>. In May 2005, FAA established a methodology for estimating aircraft PM<sub>2.5</sub> emissions. FAA has included an emissions inventory and dispersion modeling for PM<sub>2.5</sub> in the Final EIS. See <b>Section 5.6</b> in the Final EIS.</p> <p>As the proposed action does not violate national air quality standards and is compliant with the requirements of the Clean Air Act, no formal mitigation actions are required. However, if a Build Alternative is selected, the airport sponsor does intend to implement various emission reduction initiatives associated with both construction (OMP implementation) and operation of the end-state modernized airfield. See <b>Section 5.6, Air Quality</b> of the Final EIS for further information on emission reduction measures.</p>
12	<p>FAA issued policy guidance titled <i>Use of the First Order of Approximation (FOA) to estimate aircraft engine particulate matter (PM) emissions in NEPA Documents and Clean Air Act General Conformity Analyses</i> on May 24, 2005. The FOA has been refined to include consideration of the proportion of the mass of volatiles as compared to non-volatile emissions. To accommodate the volatile portion of PM emissions, a conservative multiplication factor has been added to the FOA based on validation with actual field measurements and theoretical relationships.</p> <p>Also stated in the FOA policy guidance regarding the diameter of aircraft engine generated PM, "one conclusion evident from the PM measurement tests conducted to date indicates that the particle size distribution at the exit plane of today's modern aircraft engines is below 2.5 micrometers in aerodynamic diameter. Therefore, PM emissions from aircraft engines should be reported as PM<sub>2.5</sub> as well as PM<sub>10</sub>."</p> <p>FAA has included an emissions inventory and dispersion modeling for PM<sub>2.5</sub> in <b>Section 5.6, Air Quality</b> of the Final EIS.</p>

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Hazardous Air Pollutants (HAPs)

We commend FAA for including an analysis of non-criteria hazardous air pollutants (HAPs) in the DEIS. FAA's responsiveness has been informative and has advanced our collective understanding of current and potential future conditions with respect to HAPs in the O'Hare study area. By quantifying and toxicity-ranking the emissions, several pollutants and sources were shown to be contributors to the HAPs scenario.

We suggest that the HAPs chapter could be enhanced by linking potential mitigation measures to the most significant priority-ranked HAPs and their source categories. Additionally, we recommend that the following issues be addressed in the FEIS:

- In the Executive Summary, p. ES-30, section D.5, Supplemental Air Quality Analysis, the FAA states, "...the [HAPs-related] influence of the proposed airport development on the health of those living in the vicinity of O'Hare cannot currently be quantified in a meaningful way." We recommend that the FEIS clarify that this is in large part because current and future hazardous air pollutant emission estimates for commercial jet aircraft engines are so uncertain.
- In Appendix I, p. I-1, paragraph 2, Introduction, we recommend clearer language, such as: "...Collectively, the agencies believe that, given the absence of HAP emissions data and the limitations of HAP speciation profiles for commercial jet aircraft engines, an accurate emissions inventory (the first step in a sound human health risk assessment) cannot be accomplished..."
- In Appendix I p. I-114, the last paragraph under Diesel Particulate Matter section includes two incorrect statements. "The EPA has assigned diesel particulate matter classification B1; ..." and "The EPA has assigned an inhalation carcinogenic unit risk factor..." The statements in the paragraph probably refer to California EPA. EPA has not assigned a unit risk factor to diesel PM. There is, however a unit risk factor developed by the California EPA as you have referenced in footnote 98. EPA has not classified diesel PM, but has concluded that diesel exhaust (containing the gaseous and particle phases) is "likely to be carcinogenic to humans by inhalation" (EPA Health Assessment Document for Diesel Engine Exhaust, EPA/600/8-90/057F, p.1-4). We recommend that this change be reflected in the FEIS.

Mitigation

With the magnitude of the proposed modernization, O'Hare has the opportunity to be a national leader for environmental stewardship. We believe that potential mitigation measures and their benefits should be more thoroughly described and quantified, and that firmer commitments should be made. We strongly support the air quality mitigation measures listed in Chapter 5 and Chapter 7 and encourage FAA and the City of Chicago to commit to implementing them as fully as possible.

The specific mitigation measures we propose address both criteria and hazardous air pollutants. The toxicity-ranked HAPs analysis shows that several pollutants and sources are clearly the most important contributors. In particular, diesel emissions, which also contribute

Comment	Response
13	FAA notes and appreciates the comment. EPA commended the FAA for the analysis of non-criteria HAPs contained in the Draft EIS. FAA's protocol for HAPs analysis was reviewed and approved by IEPA and USEPA.
14	Emissions reduction measures in response to air quality conditions have been identified in the Final EIS. The Executive Summary text with regard to Hazard Air Pollutants has been clarified in response to USEPA's comment.
15	The introductory text was revised for clarification purposes in accordance with USEPA's comment. See <b>Appendix I</b> .
16	The statements were corrected in the Final EIS in accordance with USEPA's comment. See <b>Appendix I</b> .
17	FAA worked with USEPA to develop a satisfactory resolution of this issue. As a result, and at the FAA's urging, the City of Chicago has committed to emission reduction measures including measures that would reduce emissions from off-road diesel construction equipment and hazardous air pollutants. The level of reduction from the measures has been quantified and is presented in <b>Section 5.6</b> of the Final EIS. Formal mitigation commitments on this and other matters will be finalized in the anticipated Record of Decision.



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to nitrous oxides (NOx), PM10, and PM2.5, can cause serious adverse health and environmental effects and were identified as a driver in the Hazardous Air Pollutant analysis. During the building phases, construction equipment is the largest contributor to diesel emissions. At Build-Out and beyond, operations-related ground support equipment (GSE) is projected to be the main contributor to diesel particulate matter at O'Hare, assuming one of the build alternatives is implemented. We encourage FAA to work with the City of Chicago to assess options for a comprehensive Airport Diesel Emissions Reduction Program that would address diesel emissions from multiple source categories in construction, ground transportation, and airport operations. Such a program would include at a minimum:

- Required usage of low sulfur or ultra-low sulfur fuels and construction equipment fitted with EPA or California Air Resource Board (CARB)-verified retrofit technologies. Under a build scenario, there will be as many pieces of diesel construction equipment on site over an eight year construction period.
- Conversion of all diesel ground support equipment to compressed natural gas, propane, or electric power.
- Alternate fuel and retrofits for internal bus and shuttle transportation.
- Time and transportation management practices and oversight that would minimize idling and queuing of diesel construction equipment and ground support equipment.

We understand that there are many factors to consider, such as ability to implement a change, commercial availability of options, and anticipated benefits versus implementation costs. We stand ready to assist in evaluating the results of the HAPs priority ranking and in identifying and evaluating mitigation options.

We note that although HAPs from motor vehicles will decrease as a result of national mobile source reduction mandates, HAPs from aircraft operations may increase. This is because the overall number of aircraft operations will increase in the future. It is not clear how technological advances in aircraft engines will affect HAP emissions in the future. The DEIS assumes that no significant improvement in HAPs emissions will occur, although it is likely that improvements in technology will actually occur and that such improvements will lead to lower HAP emissions. While we acknowledge that HAPs from aircraft operations are harder to mitigate because the FAA and the City often do not have the authority to mandate or implement changes, the FEIS should evaluate what mitigation measures could reduce the emissions of HAPs from airport operational activities at O'Hare. We believe that auxiliary power units (APU) usage is a key area to consider when evaluating HAPs reduction potential from aircraft operations. We encourage FAA and the City of Chicago to fully commit to modernizing 100% of O'Hare's gates and other operational areas with utility connections to reduce APU usage. Additionally, since most HAPs from aircraft are emitted during the idling mode, it is important to encourage the airlines to adopt practices to reduce jet aircraft idling.

Finally, we note that the practices outlined in the OMP Sustainable Design Manual (e.g., green building design, use of low-volatile organic compound (VOC) materials, Stage II vapor

Comment	Response
18	Please see response to comment 17.
19	Comment noted. The FAA appreciates the USEPA's offer of assistance and notes that the Agency's continued cooperation and availability when needed. FAA also notes that a HAPs priority ranking can be found in <b>Section I.7.3</b> of the Final EIS. Also see response to comment 18 of this letter.
20	<p>The National Aeronautic and Space Administration (NASA) and various aircraft engine manufacturers are working together to produce more efficient engines which should reduce all aircraft-related air pollutant emissions in the future (throughout the U.S). Such reductions were not considered in the Draft EIS or the Final EIS because the level of the emission reductions and the timing over which they will occur is not known.</p> <p>The City of Chicago has committed to providing pre-conditioned air and ground power at all project-related aircraft gates. This would reduce the time which pilots use auxiliary power units.</p> <p>While the City of Chicago will encourage airlines to adopt policies, which would reduce jet aircraft idling, neither the City, the airlines, nor the FAA have ultimate control over the time which an aircraft idles or the number of engines that are used to taxi. Such measures are at the sole discretion of the pilot of any aircraft whose ultimate responsibility is the safety of the aircraft's passengers.</p>

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recovery, alternative construction transportation strategies) reduce emissions of both criteria pollutants and HAPs and should be implemented.

#### Wetlands

##### Wetland Impact Analysis

The DEIS looked at four alternatives in detail, Alternative A (the No action alternative) and Alternatives C, D, and G. The no action alternative would impact approximately 23 acres of wetlands and other waters of the United States. These impacts would be the result of either on-going projects or projects that would be undertaken regardless of whether or not the O'Hare Modernization Program is approved. Under the three build alternatives C, D, and G, the impacts to aquatic resources are essentially the same as one another, but greater than Alternative A. The DEIS states that the opportunity to avoid and minimize impacts under a build scenario is essentially nonexistent due to the lack of upland open space and the requirements associated with constructing any of the build alternatives, while still maintaining existing service at O'Hare. We also recognize that existing wetlands and waters of the United States at O'Hare present risks of waterfowl-aircraft strikes that FAA is seeking to minimize. The comments that follow apply to Alternatives C, D, and G.

The project site currently includes approximately 155 acres of wetlands and other waters of the United States, which include 24.8 acres of wetland that were restored/created as mitigation for construction of the post office complex at the south end of the airport. The majority of the wetland areas on the project site are small, between 1 and 2 acres in size with low plant diversity. Two of the larger areas (NW 28 and SW 15) have more diverse wetland plant communities, which include woody species such as box elder (*Acer negundo*), silver maple (*Acer saccharinum*), cottonwood (*Populus deltoides*), willows (*Salix spp.*), green ash (*Fraxinus pennsylvanica*), black walnut (*Juglans nigra*), and American elm (*Ulmus Americana*), as well as a number of herbaceous species. Both of these wetlands showed relatively good plant diversity and scored 27 and 22, respectively, using the Natural Area Rating Index.

Other waters of the United States found on the project site include Willow-Higgins Creek, Bensenville Ditch, Crystal Creek, and ponds. These creeks show the typical characteristics of urban streams, including lack of gravel substrate, straightened channels, and eroding banks. Fish and macroinvertebrate surveys of these waters generally found species that are tolerant to disturbed conditions.

##### Wetland Mitigation

Under each of the three build alternatives C, D, and G, 153 acres of wetlands and other waters of the United States will be filled. The wetlands to be impacted include approximately 105 acres of palustrine emergent wetland, 23 acres of palustrine scrub-shrub and forested wetland, and 27 acres of other waters of the United States, which includes the streams. In order to offset the destruction of 153 acres of wetlands and other waters, the City of Chicago (City) is proposing to create 414 acres of mitigation credits. The City is proposing to mitigate as follows:

Comment	Response
21	<p>As stated previously, the City of Chicago has committed to emission reduction measures including measures that would reduce emissions from off-road diesel construction equipment and hazardous air pollutants. The level of reduction from the measures has been quantified and is presented in <b>Section 5.6</b> of the Final EIS.</p> <p>In addition, the City of Chicago has indicated to the FAA their intention to continue to use the <i>Sustainable Design Manual</i> as a guide for future development.</p>
22	<p>The comments regarding the types of wetlands at the Airport and the diversity of wetlands NW28 and SW15 are noted. The Final EIS includes changes to the Draft EIS text to comport with USEPA's comments.</p>

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- 1) for wetlands regulated by the Clean Water Act Section 404 program at a ratio of 1.5:1;
- 2) for isolated wetlands at a ratio of 1:1; and
- 3) for in-channel wetlands at a ratio of 5:1.

In general, we agree with the proposed mitigation ratios; however, we would like to see a higher mitigation ratio for the higher quality forested/scrub-shrub areas, such as NW 28 and SW15. Since it takes a considerably longer time for wooded wetland community types to become established, we recommend that these areas be mitigated in-kind at a ratio of at least 3:1.

We have an additional concern with the proposal to fill wetlands previously created as mitigation for prior wetland impacts. Once wetland mitigation is established, we expect that the site will remain wetland in perpetuity. The City has acknowledged this issue and has proposed a higher mitigation ratio of 5:1 to offset for the 24.8 acres of impacts to previously created mitigation wetlands. The DEIS states that the mitigation for the isolated wetland impacts occurring in DuPage County will be mitigated as required by the DuPage County Ordinance. Based on the mitigation credits proposed in the DEIS, the mitigation ratio for these wetlands will be close to 2:1. The mitigation ratio for waters of the United States impacts are listed as variable; however, based on the credits proposed to offset these impacts, the mitigation ratio will be approximately 5:1.

In the DEIS, the City has committed to developing a mitigation plan that would result in the generation of 414 mitigation credits. The DEIS identifies the DuPage County West Branch Preserve as the mitigation site for wetland impacts occurring on the DuPage County portion of the airport. This site has the potential to generate between 131 and 150 credits. For the proposed impacts in Cook County, the City submitted 12 additional mitigation sites to a mitigation review team consisting of staff from federal and state agencies, including EPA. The team identified six of those sites as having the potential for successful wetland restoration work. We recommend that the City continue to work with the mitigation review team on mitigation site selection to ensure that the sites selected will result in generation of sufficient mitigation credits. We also encourage the City to consider mitigating in-kind for the impacts to the higher quality wooded communities, such as those found at NW28 and SW15. Due to the significant amount of impact to stream resources on the project site, we also suggest the City consider including stream restoration work as part of the mitigation plan.

In summary, based on our coordination with FAA, we believe that the wetlands mitigation efforts are on track. We expect additional detailed information on the proposed mitigation sites, including how hydrology will be restored, what existing conditions are, and what wetland communities will be established. When that information is received, we will be able to make a determination regarding the adequacy of the proposed mitigation to offset the project impacts.

Comment	Response
23	The City has continued its discussions with the U.S. Army Corps of Engineers and the FAA in developing a strategy for mitigation of the identified wetlands impacts. As stated in <b>Table 5.12-4</b> on page 5.12-13 of the Draft EIS, the City's Conceptual Mitigation Plan included 414 mitigation credits for the 153 acres of wetlands lost as a result of Alternatives C, D, and G. Since SW15 is in DuPage County, the mitigation ratio for this wetland, which is established by DuPage County Ordinance, is 3:1. Therefore, there is no change in the amount of mitigation credit for this wetland compared to the mitigation ratio outlined in the Draft EIS. The total amount of mitigation credits has been increased from 414 to 447.4 in the Final EIS, see <b>Section 5.12</b> for further information on the change.
24	The comment regarding the mitigation ratio of 5:1 to compensate for wetlands that were previously created as mitigation for prior projects at the Airport is noted. The Draft EIS and Final EIS note that the mitigation ratio for these wetlands is 5:1.
25	The City has continued its discussions with the U.S. Army Corps of Engineers and the FAA in developing a strategy for mitigation of the identified wetlands impacts. Through these discussions, the total amount of mitigation credits would be increased from 414 to 447.4
26	The comment regarding the continued coordination related to wetland mitigation and the USEPA's determination of the adequacy of the proposed mitigation is noted. The City has continued its discussions with the U.S. Army Corps of Engineers and the FAA in developing a strategy for mitigation of the identified wetlands impacts. Through these discussions, the total amount of mitigation credits would be increased from 414 to 447.4.

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**Water Quality****Discharges From "Airside" Deicing Areas**

Proposed alternatives will result in a significant increase in the volume of wastewater that would need to be discharged to the Metropolitan Water Reclamation District of Greater Chicago (MWRDGC) Stickney treatment plant. The DEIS indicates that the proposed design of the detention basins for these alternatives would be adequate to accommodate these increased volumes, but it does not provide further evaluation of the increased flows or MWRDGC's ability to accept them. Based on the description provided by the FAA at our February 16, 2005 meeting, however, we understand that the MWRDGC will not approve any increase in pumping rate from expanded facilities at O'Hare. As a result, while the frequency of discharges to the Stickney treatment plant would increase, the flow rate would not increase and would thus not affect available capacity at the Stickney treatment plant. The FEIS should provide this clarification and also indicate how the discharges from the detention basins would be timed in relation to available capacity within MWRDGC's system. The FEIS should discuss any potential impacts to MWRDGC's treatment operations or combined sewer overflows, or explain why there would be no such impacts.

In cases where discharges are determined to comply with NPDES permit limits (presumably in warm weather months when no deicing is performed), flows would be discharged directly to receiving waters rather than to MWRDGC. The FEIS should discuss the environmental impact of these increased flows. While compliance with NPDES requirements may help to ensure that water quality is protected, NPDES permits do not regulate water quantity, which can impact stream habitat and cause streambank erosion. Increases in impervious areas can also lead to reductions in stream baseflow during low flow, dry weather periods, thus further stressing the aquatic community. These factors should be addressed in the FEIS.

**Discharges From "Landside" Activities**

The conclusion that no significant impacts will occur related to storm water discharges from other areas at the airport appears to be based on an assumption that these discharges will comply with NPDES limits. The DEIS references past instances of elevated contaminant concentrations in effluent, as well as airport improvements that have been made to try to rectify these problems. We suggest that the FEIS discuss the current compliance status for effluent limitations under O'Hare's currently effective permits, and as appropriate, activities O'Hare is carrying out now and in the future to meet its NPDES limits.

Construction activities can result in significant increases in sediment discharged to receiving waters. NPDES permits regulating construction site storm water do not typically include effluent limits, but rather require best management practices (BMPs), employed by the permittee. Even with application of best management practices, an increase in sediments can be anticipated. BMPs typically have associated design criteria (e.g., design storm for sedimentation basins), above which they will not be effective, or where their effectiveness will be reduced. The FEIS should discuss the impact of increased sedimentation on receiving waters and the BMPs to be used to mitigate these impacts.

Comment	Response
27	As stated on page 5.7-20 of the EIS, stormwater related to "airside areas" could contain deicing chemicals during winter conditions. This stormwater would be routed to on-Airport detention basins prior to conveyance to the MWRDGC Stickney Treatment Plant. These detention basins are designed to manage and accommodate the stormwater from the "airside areas". This stormwater only would be released to the MWRDGC Stickney Treatment Plant when that treatment plant can accommodate the stormwater. Thus, no changes are necessary regarding the treatment operations at MWRDGC. In addition, because the detention basins can accommodate this stormwater and the release of the stormwater can be managed, there would not be any potential for combined sewer overflows.
28	During non-winter conditions, stormwater flows from "airside areas" would be directed to receiving waters (i.e., Willow-Higgins Creek, Crystal Creek, Bensenville Ditch / Silver Creek). As stated on page 5.13-7 of the EIS, the proposed detention basins would be designed to release runoff in a manner that does not increase the flow rates of any of the three creeks that drain the Airport. Thus, no impacts to stream habitat or streambank erosion would occur as a result of the proposed action.
29	<b>Appendix K</b> of the EIS provides details regarding the current compliance status of the permits at the Airport and the Best Management Practices (BMPs) that are used at the Airport. In addition, this appendix addresses the issues associated with the history of discharge permits at the Airport.
30	The <i>Stormwater Pollution Prevention Plan</i> adopted by the City of Chicago identifies a variety of Best Management Practices (BMPs) to address sedimentation issues. As part of the implementation of the preferred alternative, the City would use these BMPs to address any increase in sedimentation that could occur during construction activities.

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Tables K-1, K-2, and K-3 list storm water discharges from numerous outfalls not covered under the industrial storm water permit. Given that storm water discharges from these areas have been found to include deicing materials in the past, the FEIS should discuss efforts to address this issue and clarify whether there are airport deicing activities in these areas that should be covered under the industrial storm water permit. The FEIS should also clarify if the above areas and outfalls are covered by the municipal separate storm sewer system (MS4) permit.

The DEIS states that the permit for the fuel farm area that was issued to the Airport Group International (AGI), "...has since been rolled into the Chicago Department of Aviation (DOA) - Phase I NPDES individual discharge permit application for the entire Airport." We have the following comments:

- The FEIS should describe the AGI and the relationship between AGI and the City of Chicago Department of Aviation.
- The FEIS should discuss the rationale for requesting that Illinois EPA include these discharges within the reissued DOA permit.
- The FEIS should discuss the impact of the proposed expansion alternatives on operations at, and storm water discharges from, the fuel farm. The FEIS should discuss what type of storm water treatment or BMPs are being used or proposed for use at the fuel farm. We suggest that the FEIS discuss current compliance status for this area, and as appropriate, activities O'Hare is carrying out now and in the future to address these discharges.

The DEIS states that the Des Plaines River is considered to be an Impaired/Threatened waterbody. The FEIS should discuss the pollutants for which the Des Plaines is considered Impaired/Threatened and the contribution that O'Hare makes to those impairments, if any.

#### Noise

##### Noise Impact Analysis

EPA believes that the noise analysis in the DEIS indicates that the proposed action will have a significant noise impact on people living near the airport. Each of the build alternatives predicts additional noise exposures versus the No Action Alternative. For example, the noise modeling for Alternative C shows that in 2013, 4,974 additional people will be exposed to DNL 65 dB noise levels compared to the No Action Alternative. Of that population, 440 people will be exposed to DNL 70 dB. In the Year 2018 (Build Out + 5 years), 6,266 additional people will be exposed to DNL 65 dB or more when compared to the No Build Alternative. Of that population, 1,433 people will be exposed to DNL 70 dB.

Using FAA's guidelines for evaluating land use compatibility with noise exposure (14 Part CFR 150), in the year 2013, 4,974 additional people will be living in an area that is considered "incompatible with noise levels" as compared to the No Action alternative and in the year 2018, the population will increase to 6,266 compared to the No Action alternative. In

Comment	Response
31	<p>Tables K-1, K-2, and K-3 of the EIS list the current outfalls included in the current NPDES permit and the outfalls included in the City's NPDES permit renewal submittal to IEPA. <b>Table K-1</b> has been updated in the Final EIS to include deicing as an activity for outfall W180. All outfalls with deicing activities are applicable to the Phase I NPDES for 2C and are noted as so in the Draft EIS and Final EIS. The City sent an additional submittal to the IEPA on February 18, 2005 to review the Phase I NPDES permit for the Airport, which included further information on the City's efforts to address deicing material discharges. Information is provided in <b>Section 5.7, Water Quality</b> of the Final EIS on this submittal.</p> <p>All current and proposed construction activities on the Airport property are applicable to the City's MS4 permit as noted in the Draft EIS and Final EIS.</p>
32	<p>Information provided in the Draft EIS was incorrect and updated information has been included in <b>Section 5.7, Water Quality</b> and <b>Appendix K</b> of the Final EIS. AGI, now known as Aircraft Service International Group (ASIG) will be maintaining their own NPDES permit and a renewal application is currently being developed, during which time the current permit is still valid. ASIG supplies fuel to the airlines air aircraft use. FAA previously approved the expansion of the fuel farm facility by the addition of two tanks in the World Gateway Program Final Environmental Assessment with a FONSI/ROD issued in June 2002. This fuel tank expansion was also assumed as a part of the analysis for the Build Alternatives. Compliance with ASIG's NPDES permit has its own enforcement mechanism by the IEPA.</p>
33	<p>The primary pollutants for which the Des Plaines River is considered to be Impaired / Threatened include nutrients, phosphorus, total ammonia, and algal growth. However, none of the three creeks that drain the Airport are listed as having contributed to the Impaired / Threatened status for the Des Plaines River. Therefore, no evidence exists that O'Hare contributes to the Impaired / Threatened status of the Des Plaines River.</p>
34	<p>The FAA agrees with the restatement of noise exposure estimates as documented in the Final EIS.</p>

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addition, under Alternative C, a total population of 24,103 (existing exposure before the project plus new exposure due to this project) will be in an area that is considered incompatible with noise levels.

FAA Part 150 defines 1.5 dB as a significant increase in exposure for populations exposed to 65 dB or greater. Another significant threshold for noise is for receptors in the DNL 60-65 dB contour that would experience a 3.0 dB increase. In order to provide complete disclosure of noise impacts, EPA recommends that the FEIS provide documentation of the existing populations in the DNL 65 dB contour that would experience a 1.5 dB increase. The FEIS should also provide documentation of the existing population in the DNL 60-65 dB contour that would experience a 3.0 dB increase.

#### Noise Mitigation

The DEIS included some cursory information about the existing Fly Quiet Program (a voluntary noise abatement program that optimizes runway use, arrival/departure flight procedures, and ground run-up procedures) and the City's School Sound Insulation Program (SSIP) and Residential Sound Insulation Program (RSIP). However, the DEIS did not disclose detailed information regarding noise mitigation options. EPA recommends that the FEIS disclose a full range of mitigation options. We believe that the following recommendations would help clarify the possible options along with their effectiveness at reducing noise exposure.

- The FEIS should include an expanded discussion regarding how the Fly Quiet Program has helped to reduce noise impacts historically, and specifically how it will be used if one of the build alternatives were implemented.
- The FEIS should include a discussion of a possible voluntary residential purchase program (buy-outs), particularly for those residents located in the DNL 70 dB contour. The discussion should include the number of residences, possible time-frame and costs of the program.
- The FEIS should include an expanded section on the continuation of the City's residential sound insulation program. This section should include detailed information on the number of residences, their location, time-frame and program costs that would be eligible for sound insulation using the criteria specified by the City's Residential Sound Insulation Program (RSIP). We note that the existing sound insulation program proposes to use 2000 noise contours. The FEIS should compare the differences in the number of residences using the build out (2013) and build out +5 (2018) contours and explain what contours will be used into the future.
- The FEIS should discuss a voluntary residential sound insulation program for all residences located in DNL 65 +dB contours for both the build out (2013) and build out +5 (2018) years. The discussion should include the number of residences, time-frames and costs of the program.

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Comment	Response
35	The FAA agrees with the restatement of noise exposure estimates as documented in the Final EIS.
36	The FAA has augmented information provided in the Draft EIS. Accordingly, the data tables in the Final EIS for each Build Alternative include estimates of population, housing units and number of sensitive noise facilities that would experience a 1.5 dB increase in noise exposure within the DNL 65+ noise contour and/or a 3 dB increase in noise exposure within the DNL 60 - 65 contour interval. As a point of fact, the FAA considers a 1.5 increase within the 65 DNL noise contour as the threshold of significance.
37	The Fly Quiet Program was implemented in 1997 at O'Hare through the cooperative efforts of the Chicago Department of Aviation (DOA), the ONCC, user airlines, and the FAA. Details of the program are provided in <b>Appendix F, Section F.5.2.</b>  If FAA's ROD approves a build alternative, the existing Fly Quiet Program would remain in place, except as affected by runway decommissioning. Also see response to comment number 11 in the ONCC letter, document number 050406_05, page U.4-363.  The program includes a series of noise abatement flight and operating procedures that are designed to minimize the effects of aircraft noise on nearby residential areas during the nighttime hours of 10 PM to 7 AM. The three main elements of the Fly Quiet Program are 1.) Preferential Runway Use, 2.) Arrival and Departure Flight Procedures and 3.) Ground Run-Up Procedures. Use of Preferential Runway and Flight Procedures are encouraged under favorable wind, weather, and operational conditions, while the Ground Run-Up procedures are a requirement of the City's DOA at all times.  Continued on following page.
38	EPA requests a discussion of a possible voluntary residential buy-out program, particularly within the DNL 70 dB contour. Such a program option has been considered previously by the City of Chicago during their draft Part 150 Noise Compatibility Plan, prepared in the early 1990's, and as part of the EIS for the earlier ODP (O'Hare Development Program).
39	Please see the response to this comment on the following page.
40	Please see the response to this comment on the following page.

Comment	Response
37 continued	To advance the objectives of the Program, the DOA distributes a Fly Quiet Aviator's Manual to airline pilots and air traffic controllers. In addition, the DOA in cooperation with the ONCC also issues a quarterly monitoring report to keep the airlines and controllers apprised of observed deviations from the Program's procedures in order to institute corrective actions. To augment information provided in <b>Section F.5.2</b> in the Draft EIS, copies of the Aviators Manual and the DOA's quarterly Fly Quiet monitoring reports for 2004 have been provided in the Final EIS.
38 continued	<p>In recognition of the potential for fragmenting existing neighborhoods, the utility of a voluntary acquisition program for homes in the O'Hare area is questionable. Instead, the City has pursued a policy of sound insulation only, which has been strongly supported by the ONCC member communities.</p> <p>Recognizing that circumstances change, the City is open to discussions with O'Hare communities regarding changes to the "sound insulate only" policy. Toward that end, both the FAA and the City of Chicago consider the ONCC as best suited to lead discussions with their communities to determine if there is interest in the City acquiring noise impacted residences on the basis of voluntary sale. However, we consider the ongoing program to sound insulate single-family, owner-occupied residences constructed before October 1998 to be the first priority. Additionally, the City, at the FAA's urging, will expand the program to include dwellings of all type regardless of ownership.</p>
39	<p>The existing voluntary residential and school sound insulation programs administered by the O'Hare Noise Compatibility Commission (ONCC) would continue until the ONCC sees fit to modify the program in the future, as needed. All eligible residences and schools within the Build Out 65 DNL and greater noise contour for a Build Alternative, if approved by FAA's issuance of a Record of Decision, would be insulated by the time Build Out would occur. Based upon information in the Final EIS, there are approximately 5,173 homes and 1 school yet to be insulated in that contour. The 1 school will be insulated by the end of 2005.</p> <p>After Build Out occurs, the City of Chicago will produce a Build Out +5, 65 DNL noise contour based on the operational characteristics of the Build Out configuration but with Build Out +5 forecasted operational levels. The City would then insulate all eligible residences and schools within the Build Out +5, 65 DNL and greater noise contour by the time Build Out +5 would occur.</p>
40	See response to comment number 38 above.

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- The FEIS should discuss possible noise mitigation options for schools, colleges, and libraries (that currently are not sound insulated), healthcare facilities, and places of worship that will be located in both the DNL 65+ dB contours for the build out (2013) and build out + 5 (2018) years.
- The FEIS should also discuss mitigations measures that might be used to reduce temporary noise impacts (exposure to DNL 65+ dB) that will occur during the phased construction.
- The FEIS should provide a full evaluation of noise mitigation options. From that range of options, FAA should document how mitigation will be determined and what the implementation timeframe will be. Commitments for mitigation should be made in the FEIS, if possible, or in the Record of Decision.

**Environmental Justice****Environmental Justice Analysis**

The project area includes a residential community, mostly in the southwest acquisition area, with a high percentage of Hispanic individuals. The FAA identifies this population as an Environmental Justice community because the total Hispanic population of Bensenville is 7,690, (37 percent of Bensenville's total population), and Hispanics make up 60 percent of the southwest acquisition area. The DEIS includes an analysis to determine if the build alternatives have the potential to cause a disproportionately high and adverse impact on minority and/or low-income populations. The DEIS documents an analysis of two impact categories, social (relocations) and noise, but it does not address all other impact categories. The DEIS is unclear whether and how the potential for disproportionately high and adverse impacts was considered for each of the impacts addressed in DEIS other than noise and social impacts. Particularly, we recommend that the topic of hazardous air pollutants should be addressed specifically in the Environmental Justice section. The FEIS should explicitly state what analysis was used for each impact category and what conclusions were reached regarding the potential for disproportionate effects to minority and/or low-income populations.

**Environmental Justice Mitigation**

The potential for disproportionate adverse disruption to minority communities is identified in the DEIS and is generally evaluated. However, there does not appear to be any mitigation measures specifically designed to address the disproportionate impacts on minority residents with regard to disruption of community character. As stated in Section 5.4-23, "If property is acquired, the most significant disruptions in community character would occur in and around the acquisition area. It is important to consider businesses and residents who would be relocated, as well as those who would remain in the area. Local businesses, schools, and places of worship often are the center of community activity. The proposed relocation under the Build Alternatives ... could adversely affect the community character." The City of Chicago's March 13, 2003 Draft Relocation Plan does not appear to consider the potential for disproportionate impacts to minority and low income populations, and it does not provide any mitigation measures to address such impacts. Mitigation measures to address community

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Comment	Response
41	<p>EPA requests a discussion of possible noise mitigation options for schools, colleges, libraries, healthcare facilities, and places of worship located in the DNL 65 dB contours for build-out and build-out +5 years. These types of land uses are considered by the FAA to be noise-sensitive, unless properly sound-insulated, and are eligible for funding from aviation-derived revenues such as the FAA's Airport Improvement Program (AIP) and Passenger Facility Charges (PFC's). In addition to residences, the City of Chicago has given a high-priority in the past to the sound insulation of schools (see <b>Appendix F, Section F.5</b>). While FAA acknowledges USEPA's comments, in actual practice, use of AIP or PFC funds for land uses other than residences and schools is uncommon. Lower priority is given to non-residential/non-school uses because there is a less well-established relationship between noise and these uses. The Schultz Curve and various sleep disturbance studies strongly support a consistently high degree of noise sensitivity of residences to aircraft noise. Additional studies have demonstrated the impacts of noise in school classrooms.</p> <p>The FAA recommends that the City of Chicago undertake discussions with ONCC regarding potential mitigation of noise-sensitive, non-residential/non-school land uses. However, in accordance with current policies, any such mitigation would occur only after completion of the residential and school sound insulation programs committed to in this Final EIS.</p> <p>To date, the City of Chicago's Residential Sound Insulation Program has insulated 5,925 residential units at a cost of approximately \$189 million. In addition, the School Sound Insulation Program has insulated 115 schools at a cost of approximately \$255 million.</p>
42	A request was also made by the EPA to include in the Final EIS a discussion of mitigation measures to reduce temporary noise impacts in the DNL 65 dB contours of the proposed project phases. The FAA recommends that the City of Chicago work with the ONCC to publicize temporary noise impacts during construction phases. The City considered the efficacy of sound-insulating noise-sensitive uses to mitigate temporary noise impacts but has rejected that option because it would divert the limited sources of funding permanent mitigation of long-term impacts to measures that serve only short-term purposes.
43	See responses to comments number 38 and 39.
44	See <b>Chapter 5, Section 5.21</b> of the Final EIS for further information on analysis of other resource categories for potential environmental justice impacts.



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disruption, including measures specific to displaced business owners, should be included in the FEIS.

Mitigation measures for acquisition/relocation do not appear to specifically address the potential for disproportionate impacts on a minority population. Section 5.21.5.1, on "Mitigation for Acquisition/Relocations," does not clearly address how administering the Uniform Relocation Act for these acquisitions/relocations will be done in order to address the disproportionate impacts; rather, it identifies the measures that will be employed throughout the acquisition area. The "Draft O'Hare Land Acquisition Relocation Plan" does not include measures specifically designed to address the disproportionate impact of acquisitions on minority populations and to ensure nondiscrimination under Title VI of the Civil Rights Act of 1964. We are aware of FAA's efforts to provide services that pertain to the special needs of this group, yet none of those activities are discussed in the DEIS. We recommend that FAA document their efforts in the FEIS and include the continuation of such efforts as mitigation measures to ensure that the potential for disproportionate impacts is addressed.

The environmental justice analysis concludes that there is a "potential" for a disproportionately high and adverse impact on minority populations under Alternatives C, D, and G, within both the 65 DNL area and the area that would experience a DNL 1.5dB increase within the 65 DNL area. However, Section 5.21.6.2, "Potential Noise Impacts on Environmental Justice Populations Outside of the Proposed Acquisition Areas," indicates that the FAA has not reached a determination with regard to the disproportionality of impacts and that it will make its determination based in part on potential, unspecified mitigation measures. We recommend that the FAA consider and adopt in the FEIS the following:

- Measures to ensure that the school sound insulation program and residential sound insulation program are carried out in a way that ensures proportional and timely coverage for affected minority and low-income populations.
- Measures such as provision of additional technical assistance to local jurisdictions to support rapid and efficient noise mitigation; including assistance to minimize barriers to mitigation implementation, if necessary.

#### Alternatives Evaluation

Overall, the DEIS does a good job of describing current conditions at O'Hare. The alternatives analysis is a comprehensive look at all non-airport and airport alternatives. The process used to screen this full range of alternatives appears appropriate. As a cooperating agency on this project, EPA has had extensive discussions with the FAA on the purpose and need for the project and the alternatives evaluation. FAA has considered the comments that we have made and adjusted the presented information accordingly. We appreciate this opportunity to learn about and influence the project at such an early stage.

The three alternatives retained for detailed evaluation are all O'Hare build alternatives: Alternative C (the City of Chicago's proposed alternative), Alternative D, and Alternative G. Each of these alternatives would include construction of new west terminal facilities and a

Comment	Response
45	See <b>Chapter 7</b> and <b>Chapter 5, Section 5.21</b> of the Final EIS for information on mitigation for environmental justice impacts. The City of Chicago has committed to provide advisory services for those adjacent to the proposed acquisition area. These advisory services are only required for businesses within the proposed acquisition area, however, the City has agreed to provide these same services to businesses outside the acquisition area.  Also, see <b>Section 5.21</b> of the Final EIS for updated information on analysis of other resource categories for potential environmental justice impacts.
46	A discussion of FAA's extensive outreach to the environmental justice population was provided in <b>Appendix P</b> of the Draft EIS. Additional information on activities conducted since the publication of the Draft EIS has been provided in <b>Appendix P</b> of the Final EIS.  See <b>Chapter 7</b> of the Final EIS for information on mitigation for environmental justice impacts.
47	Preliminary conclusions on impacts to environmental justice populations have been included in <b>Chapter 5, Section 5.21</b> of the Final EIS. See <b>Chapter 7</b> of the Final EIS for information on mitigation for environmental justice impacts.
48	See <b>Chapter 7</b> of the Final EIS for information on the specifics of noise mitigation. In addition, the City of Chicago has committed to provide multi-lingual relocation services for those individuals and businesses that are in the proposed acquisition area.
49	FAA acknowledges the USEPA's evaluation of the Draft EIS, specifically the acknowledgement that the "alternatives analysis is a comprehensive look at all non-airport and airport alternatives." FAA also appreciates working with USEPA as a Cooperating Agency on development of this EIS, including development of purpose and need.

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large-scale rearrangement of airfield roads, taxiways, and runways. Alternative C would consist of eight runways: six in an east-west orientation and two in a northeast-southwest orientation. Alternatives D would have seven runways, the same runways as Alternative C minus the southernmost east-west runway. Alternative G would have eight runways, the same as Alternative C except the southernmost east-west runway would be oriented in northwest-southeast orientation. The alternative analysis comprehensively addresses all feasible alternatives. We have provided FAA with feedback regarding the Purpose and Need for the Project and the corresponding Alternatives Analysis. We have included some minor comments on the project's purpose and need as well as alternatives analysis in this letter.

We believe that the alternatives analysis is comprehensive and appropriate for such a large-scale project as this one; however, there are places where we believe the alternatives analysis could be strengthened in order to address comments from interested or affected parties. In Sections 2.2.1.1 and 2.2.1.2, we suggest that FAA provide a summary of the recommendations developed by the 1991 and 2001 O'Hare Delay Task Force, including those that were and were not implemented and why. This is important information that helps inform the interested parties and the decision maker regarding the No Action Alternative. Also, we believe the rationale for dropping Alternative E out of the detailed analysis should be enhanced. It is clear that this alternative does not perform as well, but it also has less impact on the local tax base. FAA should expand on the rationale as to why this alternative was dropped versus the alternatives that were retained for detailed analysis. The rationale for dismissing Alternatives E, F, and the Blended Alternative all rely, in part, on inconsistencies with law. The FAA should explain more fully why an alternative is inconsistent with existing law. We recommend that these inconsistencies be explicitly stated in the FEIS.

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Comment	Response
50	<p>The FAA notes the EPA's comment, "[t]he alternative analysis comprehensively addresses all feasible alternatives."</p> <p>Sections 2.2.1.1 and 2.2.1.2 have been revised to include a reference to the summary of the recommendations developed by the 1991 and 2001 O'Hare Delay Task Forces in <b>Appendix A</b> of the Final EIS.</p> <p>The rationale for the elimination of Alternative E, Alternative F, and the Blended Alternative has been clarified to address USEPA's comments.</p>

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**SUMMARY OF RATING DEFINITIONS AND FOLLOW UP ACTION\*****Environmental Impact of the Action****LO-Lack of Objections**

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

**EC-Environmental Concerns**

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impacts. EPA would like to work with the lead agency to reduce these impacts.

**EO-Environmental Objections**

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

**EU-Environmentally Unsatisfactory**

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS site, this proposal will be recommended for referral to the CEQ.

**Adequacy of the Impact Statement****Category 1-Adequate**

The EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collecting is necessary, but the reviewer may suggest the addition of clarifying language or information.

**Category 2-Insufficient Information**

The draft EIS does not contain sufficient information for the EPA to fully assess the environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

**Category 3-Inadequate**

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

\*From EPA Manual 1640 Policy and Procedures for the Review of the Federal Actions Impacting the Environment

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U.S. Department  
of Transportation  
Federal Highway  
Administration

Illinois Division

3250 Executive Park Drive  
Springfield, Illinois 62703

April 6, 2005

HA-II

Mr. Mike MacMullen  
Airports Environmental Program Manager  
Federal Aviation Administration  
Chicago Airports District Office  
2300 East Devon Avenue  
Des Plaines, IL 60018

Dear Mr. MacMullen

Subject: Draft EIS Comments  
O'Hare Modernization Program  
Cook County

We have reviewed the Draft Environmental Impact Statement (DEIS) for the O'Hare Modernization Program. Section 5.3 of the DEIS identifies intersections and roadway segments that exceed an established "threshold of significance" for Level of Service (LOS) or Volume/Capacity (V/C) due to increased traffic volumes. Based upon this analysis, the need for future surface transportation improvement is apparent. However, the DEIS does not indicate whether or not the increased traffic volumes are generated by the O'Hare improvements.

We request that the Final Environmental Impact Statement (FEIS) provide this additional analysis. If it is found that the O'Hare improvements are the cause of this additional traffic, the FEIS should discuss the possible environmental impacts of the improvements to the surface transportation system caused by the O'Hare improvements.

If you have questions or comments, please contact Chris Byars at 312-886-1606.

Sincerely yours,

William C. Byars  
Transportation Engineer

For: Norman R. Stoner, P.E.  
Division Administrator



OPTIONAL FORM NO. 10 (2-80)

FAX TRANSMITTAL		# of pages ▶ 1
To: Mike MacMullen	From: Chris Byars	
Dept./Agency: FAA	Phone #: 312-213-1606	
Fax #: 847-294-7046	Fax #:	

FORM 10-101-017-1238 0010-101 GENERAL SERVICES ADMINISTRATION

Comment	Response
1	<p>The comments on the alternatives are noted. The intersections and roadway segments identified that exceeded the established thresholds of significance were at locations within the surface transportation study area where the level of service (LOS) or volume-capacity ratio (V/C) would become unacceptable with the Build Alternatives only.</p> <p>If the LOS or V/C would become unacceptable with both the No Action Alternative and the Build Alternatives, no mitigation measures would be required. However, at the locations where mitigation would be required, potential mitigation measures have been identified to address project-related surface traffic.</p> <p>As part of these measures, the FAA is continuing discussions with the City of Chicago to further identify appropriate mitigation initiatives to address project-related surface traffic for the Build Alternatives, which will be addressed in the Record of Decision, if a Build Alternative is selected. For further information, please see <b>Section 5.3</b> of the EIS.</p> <p>For further information with regard to the potential cumulative impacts to the surface transportation system, see <b>Chapter 6</b> of the EIS.</p> <p>Finally, the FAA appreciates FHWA's comments on the Draft EIS.</p>

HENRY J. HYDE  
8TH DISTRICT, ILLINOIS

COMMITTEES:  
CHAIRMAN  
INTERNATIONAL RELATIONS  
JUDICIARY

050406\_31

Congress of the United States  
House of Representatives  
Washington, DC 20515-1306  
April 6, 2005

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Ms. Cecelia L. Hunziker  
Regional Administrator  
Great Lakes Region  
Federal Aviation Administration  
2300 East Devon Avenue  
Des Plaines, Illinois 60018

Mr. Michael MacMullen  
Airports Environmental Program Manager  
Federal Aviation Administration  
Chicago Airports District Office  
2300 East Devon Avenue  
Des Plaines, Illinois 60018

**Re: DEIS for OMP proposal**

Dear Ms Hunziker and Mr. MacMullen:

I have previously submitted a Preliminary Statement on the Draft Environmental Impact Statement (DEIS) For Chicago's Proposed "O'Hare Modernization Project" (February 22, 2005) (copy enclosed)

I wish to incorporate my Preliminary Statement as part of this formal comment on the DEIS. However, I have some comments and additional questions which I believe are very important and which the DEIS fails to answer. I pose these questions in this letter in the hope that FAA's prompt answers to these questions will enhance public confidence in the FAA decisionmaking process.

**Cost**

1. What and where is the detailed cost estimate for the facilities listed in the Chicago Master Plan and in the DEIS?
2. Does the detailed cost estimate include a contingency factor? If so where is that factor listed and how much is the contingency percentage and amount? I am advised that a proper and prudent contingency factor and amount for a project as large as and as early in planning and design as the Master Plan-OMP project would be at least 25 % and that a proper contingency cost estimate here would total several billion dollars.
3. Does the detailed cost estimate include "capitalized interest"? I am advised that under generally accepted accounting principles capitalized interest should be included in the cost estimate. See Financial Accounting Standards Board, Statement of Financial Accounting Standards No. 34: Capitalization of Interest Cost, October 1979.

THIS STATIONERY PRINTED ON PAPER MADE OF RECYCLED FIBERS 55

Comment	Response
1	The responses to the preliminary statement are included in this document beginning on page U.2-51.
2	Comment noted.
3	In response to this request and others, the FAA has reviewed additional cost information related to the City's proposed O'Hare Modernization Program (OMP). This additional cost information provided by the City has been posted to the FAA's website, <a href="http://www.agl.faa.gov/OMP/">http://www.agl.faa.gov/OMP/</a> .  As discussed in <b>Section 1.7 of Chapter 1</b> of the Final EIS, the FAA has concluded that the City's cost estimates are reasonable for the purposes of the National Environmental Policy Act (NEPA).
4	The City's finance plan for the projects included in the DEIS include construction cost contingencies consistent with standard airport capital program practices. Please see FAA's response to <i>Campbell-Hill's April 6, 2005</i> comments on the DEIS, specifically comment 95, on page U.4-561.
5	The cost estimate reported in the DEIS is the estimate of the capital cost—also referred to as project cost or construction cost. This cost estimate does not include financing costs. Capitalized interest has been considered by the City in the financing plan for capital development—but as one of several financing costs, and not as part of the capital cost estimate.  In preparing the financial plan for OMP, the City considered capitalized interest and other financing costs. The City's financial plan reported in the O'Hare Master Plan, and referenced in the DEIS, includes assumed capitalized interest for OMP. The City's recent bond issuances related to OMP capital costs included capitalized interest for future projects. The fact that this financing cost was not included as a capital cost (because it is not a capital cost) does not mean that either (a) it was ignored, or (b) it should be added to the estimated capital cost.

Ms. Hunziker and Mr. MacMullen  
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#### Financing

4. Where is a copy of Chicago's plan for financing the cost of the Master Plan-OMP project? I presume that FAA would require competent and detailed evidence to assure that there are sufficient financial assurances that Chicago and the airlines can finance and pay for the Master Plan-OMP project. Indeed such evidence that Chicago can pay for the non-federal portions of the project is a statutory requirement before FAA can award federal AIP funds. For the FAA to simply "assume" that the billions of dollars needed to pay for the Master Plan-OMP project is hardly evidence sufficient to comply with this requirement.

#### Phase I

I preface my questions about Phase I with some preliminary observations. Fair and objective analysis of the cost and financial information that is available must make it obvious to even the most ardent OMP booster that the "full" OMP project cannot and will not be built. Neither Chicago, the O'Hare based airlines, nor the federal government can assemble the billions needed to build the massive "full" OMP project — even at the FAA's low-ball \$14.2 billion cost estimate used in the DEIS.

The only "real" project being proposed by Chicago and the airlines serving O'Hare is a much smaller project which Chicago calls "Phase I". Unlike the "full" OMP, which involves both extensive runway construction and major new terminal construction, Phase I is limited to two new runways and an extension of an existing runway. Unlike the "full" OMP, which has not received required airline approval and financial commitment under the "Majority In Interest" ("MII"), the airlines have given MII approval for Phase I. It is the "Phase I" project which is the only "real" project that is being proposed and FAA should examine Phase I as the real proposal (not the ephemeral and unachievable full OMP) and Phase I is the project proposal against which FAA must examine any alternatives.

5. Given these observations, what are the alternatives to Phase I?

As I understand the situation, if Phase I is all that Chicago and the airlines can afford to build or are willing to build, Phase I will require a "blended alternative" involving Phase I with demand management at O'Hare coupled with the use of other airports in the region and perhaps other hub airports elsewhere.

6. If that is true why can't there be a "blended alternative" which involves the use of the existing O'Hare with demand management at O'Hare coupled with the use of other airports in the region and perhaps other hub airports elsewhere? As I understand FAA's demand management authority, FAA can require schedule adjustments to avoid or reduce delays to acceptable levels without the need to destroy any homes or businesses or religious cemeteries. Further, the use of other airports in the region insures that there is adequate capacity to accommodate traffic growth.

Comment	Response
6	The detailed cost estimate referred to in response to comment 3 has been posted on the FAA's Document Library website, <a href="http://www.agl.faa.gov/OMP/">http://www.agl.faa.gov/OMP/</a> .  In response to this comment, as well as others, the FAA has expanded the discussion of the financial feasibility of the OMP in <b>Chapter 1, Section 1.7</b> .
7	The FAA respectfully disagrees with the commenter's opinions regarding the financial feasibility of the OMP. The basis for FAA's disagreement can be found in the responses to <i>Campbell-Hill's April 6, 2005</i> comments on the DEIS, please see <i>Campbell-Hill Section 3.0</i> , beginning on page U.4-558.
8	Please see FAA's response to <i>Campbell-Hill's April 6, 2005</i> comments on the DEIS, specifically comment 103, on page U.4-568.
9	Please see response to comment 3 on the previous page. Also, please see the FAA's responses to <i>Campbell-Hill's April 6, 2005</i> comments on the DEIS, specifically <i>Campbell-Hill Section 2.0</i> , <i>Campbell-Hill Section 3.0</i> and <i>Campbell-Hill Section 4.0</i> , beginning on pages U.4-525, U.4-558, and U.4-581, respectively.
10	The FAA has evaluated the commenter's proposals in a new <b>Section 3.6</b> in <b>Chapter 3</b> .

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**Religious Freedom Protection  
under the First Amendment and  
the Federal Religious Freedom Restoration Act**

I have several questions about FAA's apparent abdication of its duties under the federal Religious Freedom Restoration Act and FAA's apparent financial support and participation in Chicago's deprivation of the rights of the religious cemeteries which FAA and Chicago have targeted for destruction.

7. Why has the FAA stonewalled the Religious Objectors and refused to answer their questions which they have been asking for two years about whether the FAA is going to recognize and enforce the Religious Objectors' rights under federal Religious Freedom Restoration Act and the First Amendment? Because FAA has stonewalled on answering these questions, I am going to ask these questions myself and am requesting prompt answers.
8. Does FAA agree that the destruction and removal of the Rest Haven and St. Johannes cemeteries will inflict a "substantial burden" on the religious practices and beliefs of the Religious Objectors within the meaning of the First Amendment Free Exercise Clause and the federal Religious Freedom Restoration Act? If FAA does not agree, what are the reasons for FAA's disagreement?
9. Does FAA agree that the affidavits previously submitted to the FAA by the Religious Objectors are sufficient evidence of the fact that the destruction and removal of the Rest Haven and St. Johannes cemeteries will inflict a "substantial burden" on the religious practices and beliefs of the Religious Objectors within the meaning of the First Amendment Free Exercise Clause and the federal Religious Freedom Restoration Act? If FAA does not agree, what are the reasons for FAA's disagreement?
10. Does FAA agree that Chicago and the State of Illinois have treated the Rest Haven and St. Johannes religious cemeteries differently from all other religious institutions in the State of Illinois (including all other religious cemeteries in Illinois) by stripping the protections of the Illinois Religious Freedom Restoration Act (Illinois RFRA) from the Rest Haven and St. Johannes religious cemeteries while preserving the protections of Illinois RFRA for all other religious institutions in the State of Illinois (including all other religious cemeteries in Illinois)? If FAA does not agree, what are the reasons for FAA's disagreement?
11. Does FAA agree that the differential treatment of the Rest Haven and St. Johannes religious cemeteries from all other religious institutions in the State of Illinois (including all other religious cemeteries in Illinois) — by stripping the protections of the Illinois Religious Freedom Restoration Act (Illinois RFRA) from the Rest Haven and St. Johannes religious cemeteries while preserving the protections of Illinois RFRA for all other religious institutions in the State of Illinois (including all other religious cemeteries in Illinois) — violates the constitutional guarantees of Equal Protection of the law? If FAA does not agree, what are the reasons for FAA's disagreement?

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Comment	Response
11	The FAA has been requested to respond to these questions that summarize the issues the commenter has presented to the agency on this subject. After careful review of these questions, we believe that <b>Sections 5.22 and 5.23</b> are responsive to those issues, and we direct the commenter's attention to that portion of the Final EIS.

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12. Does FAA agree that, pursuant to the requirements of the First Amendment Free Exercise Clause, FAA cannot allow the destruction and removal of St. Johannes and Rest Haven religious cemeteries without first demonstrating: 1) that there is a compelling governmental need to destroy these religious cemeteries and 2) that there are no alternatives to meet that governmental need that would not destroy these religious cemeteries? If FAA does not agree, what are the reasons for FAA's disagreement?
13. Does FAA agree that, pursuant to the requirements of the federal Religious Freedom Restoration Act, FAA cannot allow the destruction and removal of St. Johannes and Rest Haven religious cemeteries without first demonstrating: 1) that there is a compelling governmental need to destroy these religious cemeteries and 2) that there are no alternatives to meet that governmental need that would not destroy these religious cemeteries? If FAA does not agree, what are the reasons for FAA's disagreement?
14. Does FAA contend that there is a compelling governmental need to destroy and remove St. Johannes and Rest Haven religious cemeteries? If so, please set forth the evidence which demonstrates that compelling governmental need. I am particularly interested in the answer to this question because I understand that one of the cemeteries is to be destroyed simply to allow the moving of a shipping company facility onto the cemetery site. Please identify which shipping company in FAA's mind represents a "compelling" governmental need sufficient to justify the destruction of a religious cemetery. Please tell me why there is a "compelling governmental to destroy the other religious cemetery when much of the delay "problem" at O'Hare is — by FAA's own acknowledgment — self inflicted by airline over scheduling and when this "problem" can be remedies both the stroke of a pen through FAA demand management.
15. Does FAA contend that there are no alternatives to meet the governmental need which FAA says requires the destruction and removal of St. Johannes and Rest Haven religious cemeteries? If so, please set forth the evidence which demonstrates that there are no alternatives to meet the governmental need which would not destroy and remove St. Johannes and Rest Haven religious cemeteries.
16. Does FAA agree that the determination of contested issues of law and fact as to the claims for protection of the Religious Objectors' religious rights — under the First Amendment Free Exercise Clause and under the Equal Protection component of the Fifth Amendment under the doctrine of *Bolling v. Sharpe*, 347 U.S. 497 (1954), — fall within the mandate of Article III of the Constitution that these issues be determined by an Article III Court. If FAA does not agree, what are the reasons for FAA's disagreement?
17. Does the FAA agree that determination of contested issues of law and fact as to the FAA's compliance with federal RFRA falls within the Article III mandate and that the determination of these disputed legal and factual issues must be made by an Article III Court? If FAA does not agree, what are the reasons for FAA's disagreement?



Comment	Response
11	Please see the response to this comment on page U.2-31.

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18. Does the FAA agree that the FAA decisions — as to whether to: 1) approve the Airport Layout Plan for the OMP, 2) approve the elements of the OMP in the NPIAS-CIP, 3) approve PFC and AIP funding for the OMP — are adjudications within the meaning of 5 U. S. C. §551? If FAA does not agree, what are the reasons for FAA's disagreement?
19. Does the FAA agree that Religious Objectors are entitled to participate as opposing parties to Chicago's requests for FAA approval in these various FAA decision-making actions? If FAA does not agree, what are the reasons for FAA's disagreement?
20. Does the FAA agree that in such FAA decision-making proceedings the Religious Objectors have liberty and property rights in the continued sanctity and physical integrity of these two religious cemeteries that are protected by the Due Process Clause? If FAA does not agree, what are the reasons for FAA's disagreement?
21. Does the FAA agree that the Due Process rights of the Religious Objectors in these FAA adjudicatory proceedings trigger the application of 5 U.S.C. §554 (and §§556 and 557) under the holding of *Wong Yang Sung v. McGrath*, 339 U.S. 33 (1950). If FAA does not agree, what are the reasons for FAA's disagreement?
22. Does the FAA agree that under the Due Process Clause, the Religious Objectors have a right to be provided the data, communications and other material exchanged between Chicago and the FAA as well as the evidentiary material developed internally by FAA (relating to the proposed FAA adjudicatory decisions at issue) at a meaningful time and in a meaningful manner? If FAA does not agree, what are the reasons for FAA's disagreement?
23. When will FAA provide Religious Objectors with the data, communications and other material exchanged between Chicago and the FAA as well as the evidentiary material developed internally by FAA relating to the proposed FAA adjudicatory decisions at issue? I am particularly concerned about FAA's continued withholding of documents which relate to FAA's decisionmaking processes on the OMP-Master Plan projects. I am advised that the FAA has withheld thousands of pages of documents from the Religious Objectors under some as yet unspecified claim of FOIA exemption. Of course you know that FOIA exemptions are inapplicable to FAA's duties to include in its administrative record all of the materials FAA has considered and FAA's corresponding duty to provide the Religious Objectors opportunity to examine and comment on these documents prior to FAA decisions in this matter.

#### The Need for Full Disclosure

There is a paramount need for full disclosure by Chicago and the FAA about critical elements of the Master Plan-OMP project.

It is clear that there have been significant affirmative distortions of facts by FAA and Chicago as well as material omissions of critical adverse factual information. For example, as discussed above, neither Chicago nor FAA has released a full "quantity and unit" estimate for the full OMP including such elements as customary and prudent project

11

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cost contingencies and capitalized interest. Failure to make such disclosures gives the public, the federal taxpayer and the investors who must buy the bonds to pay for the project an accurate assessment of the financial and aviation strengths and weakness of the project.

Similarly, as pointed out by the Religious Objectors and the communities in Bensenville and Elk Grove Village, failure to model and disclose the serious delay and capacity problems that will result from the full OMP at likely higher levels of demand — as opposed to the relatively low demand levels used in the FAA analysis — gives the public and the investment community a false and misleading image of the capabilities (or more accurately the lack of capabilities) of the full OMP.

This requirement of detailed full disclosure — on both the strengths and especially the weaknesses of the full OMP (and the Phase I project) — is not just some ephemeral “do-good” nostrum. In the post-Enron, post MCI world, Chicago cannot go to the bond market hiding critical flaws in the financial and aviation elements of the project. See *e.g.*, the recent opinion of the United States District Court in *In re Worldcom, Inc. Securities Litigation*, 346 F.Supp.2d 628 (S.D.N.Y. 2004) holding that underwriters who help companies and governments sell bonds to the investing public have strict “due diligence” obligations to investigate and disclose the existence of material misstatements and material omissions in bond prospectuses.

The problems identified in this by the Religious Objectors and Bensenville and Elk Grove Village should serve as a “red flag” to any underwriters seeking to sell OMP related bonds. Further, these problems should serve as a “red flag” to senior officials in the FAA who are being asked to make major financial commitments of taxpayer money based on either material affirmative misstatements or material omissions of significant facts in the DEIS documents. The taxpayer public has as much right to the protection of full disclosure as the bond investors.

#### Conclusion

Thank you for your assistance with this matter. I look forward to your reply.

Sincerely yours,



Henry J. Hyde

Comment	Response
12	<p>As noted in response to comment 3, the FAA has reviewed additional cost information related to the City's proposed O'Hare Modernization Program (OMP). This additional cost information provided by the City has been posted to the FAA's website, <a href="http://www.agl.faa.gov/OMP/">http://www.agl.faa.gov/OMP/</a>.</p> <p>As discussed in <b>Section 1.7 of Chapter 1</b> of the Final EIS, the FAA has concluded that the City's cost estimate and financing plan are reasonable for the purposes of the National Environmental Policy Act (NEPA).</p>
13	The FAA respectfully disagrees with this comment. The FAA's simulation modeling of the OMP is based on appropriate levels of demand within the reasonable foreseeable future.
14	<p>The FAA notes that the bonding opinion is publicly available and it is up to the free marketplace to determine if adequate information is available. Further, approval of AIP/PFC funding is subject to review outside the NEPA process.</p> <p>Also, please see response to comment 12.</p>

Preliminary Statement of  
Congressman Henry J. Hyde  
To the  
Federal Aviation Administration  
On the  
Draft Environmental Impact Statement (DEIS)  
For Chicago's Proposed  
"O'Hare Modernization Project"

February 22, 2005

Thank you for the opportunity to present my preliminary comments to the Federal Aviation Administration on the Draft Environmental Impact Statement (DEIS) for Chicago's proposed "O'Hare Modernization Project" or "OMP". I emphasize that these are preliminary comments since I intend to file more detailed comments prior to the close of the comment period.

What is striking about the massive several thousand page DEIS is the "Alice In Wonderland" quality of the document. The DEIS is filled with hundreds of maps, pictures and drawings and thousands of pages of text. Yet there is very little discussion, analysis, or factual support on several key issues relating to the project. It seems as if the thousands of pages of text and drawings are designed to camouflage this dearth of critical information and analysis on the proposed O'Hare expansion project.

Compounding this impression of surrealism is the fact that when a few words of analysis are put forward in the EIS, the FAA's conclusions are demonstrably false and are contradicted by plain fact.

Let me give a few illustrations:

**1. The Cost of the Project.** Chicago has long claimed that its O'Hare expansion project would cost \$6.6 billion dollars. In February of 2004, Chicago admitted to the *Chicago Tribune* and the *Daily Herald* that the cost was \$14.8 billion dollars. Later that same year Chicago admitted to the *Los Angeles Times* that the project would cost \$15 billion.

There are two components of these \$14.8 billion and \$15 billion cost estimates given to the news media in 2004 that are important to note. First, these estimates were openly based on outdated cost information, *i.e.*, major components were costed in 1999 and 2001 dollars rather than 2002 dollars. Second, these estimates did include a component known as "capitalized interest", *i.e.*, the financing charges which Chicago and the airlines must pay to build the project and which, according to proper accounting principles, must be included in the capital cost of the project. An example of

Comment	Response
15	Comment noted.
16	For reasons explained in detail in the responses throughout this document, the FAA respectfully disagree with the commenter's characterization of the Draft EIS.

15

16

this capitalized interest is Chicago's agreement with the airlines to defer their debt payments on the runways — an agreement that Chicago says is "pavement before payment". This "capitalized interest" component of the cost is not a trivial sum — it amounts to billions of dollars — and it must be included in the overall cost of the project.

Fast forward to the DEIS and the FAA's cost estimate. To the FAA's credit, FAA included an adjustment in the Chicago's cost estimate to reflect 2004 costs as contrasted with 1999 and 2001 dollars. But *Mirabile Dictu*, the FAA cost estimate of \$14.1 billion actually went down from the cost estimates Chicago has given the Tribune, Daily Herald and Los Angeles Times. And inexplicably missing from the FAA cost estimate is any mention of capitalized interest — a multi-billion dollar item that the FAA must have intentionally overlooked. This deliberate oversight improperly chopped \$billions off the cost of the expansion project.

As our Illinois Senator Everett Dirksen used to say: "A billion here and a billion there and pretty soon you're talking real money". The FAA's cost estimate should include all the elements of the cost of the project.

**2. How is Chicago going to pay for the project?** I find it incredible that the several thousand page EIS contains but one sentence of analysis on the critical issue of Chicago (and the airlines) ability to pay for the enormous costs of this project. The FAA in the DEIS simply "assumes" that the billions of dollars needed to build the project will magically appear. FAA then builds on this unsupported and incredible one sentence assumption ( *i.e.*, that the money will somehow appear) to leap to the equally unsupportable conclusions that Chicago's massive O'Hare expansion project is "feasible and prudent" and that Chicago (the sponsor) has the financial resources to pay for the project.

This issue of financial feasibility to pay these enormous costs has several critical implications. First, if the full OMP is a financial pipedream — which it appears to be — then the entire DEIS analysis falls apart like a house of cards. If the full OMP is

Comment	Response
17	Please see response to comments 3-8 of this document, beginning on page U.2-29.

17

— in the words of the Dot Com bubble simply “vaporware” — then FAA should be looking at the expansion project that Chicago and the airlines say they can finance *e.g.*, a much smaller in scale “Phase One”. Moreover, instead of examining alternatives to the full, financially unaffordable OMP, FAA should examine alternatives to meeting the region’s aviation needs that are alternatives to Phase One.

Second, the unsupportable financial burden imposed by the full OMP needs to be disclosed and examined for its impact on the major airlines at O’Hare (United and American), on their employees, and on the investors who would be asked to buy the \$billions in bonds to build the full OMP. United has just defaulted on several hundred million dollars in bonds that were used to build United’s existing terminal at O’Hare. Do we really think United is in the kind of financial health to pay for \$billions more in additional debt? Assuming United were foolish enough to sign on the dotted line to obligate itself to pay this huge new bond debt, do the words “serial bankruptcy” come to mind?

American Airlines is not in much better shape. And the FAA makes no mention of the fact that American and United refused to give their required contractual approval (called “Majority in Interest” approval) to the huge terminal component of the O’Hare expansion — *i.e.*, the “World Gateway Project”.

Indeed, nowhere in the DEIS — which purports to deal with issues of project “feasibility and prudence” — is there any mention of the ability of the major airlines to bear their share of the financing burden of the project. Nor — despite the requirement the DEIS examine economic impacts of the project — is there any analysis of the economic impact of this enormous cost on the future financial viability of the airlines if they are so foolish as to sign on for this huge debt.

Similarly, there is no discussion in the DEIS of the impact of this huge debt on the economic welfare of the tens of thousands of employees who work for these airlines. The airlines penchant for robbing “Peter to pay Paul” is already evident in this project.

United Airlines is proposing to take on billions of dollars in financially imprudent debt while at the same time refusing to pay its pension obligations to its employees. Instead of saddling itself with mountains of additional debt for a questionable project by advocating "pavement before payment", United should be advocating pensions before payment.

But the burden imposed on airlines employees does not stop at pensions. It does not take a rocket scientist to figure out that payment of this huge debt will require the airlines to pass the unit cost of this debt onto their passengers — raising the O'Hare airlines cost per passenger to astronomical levels. In today's low-cost airline environment, imposing these costs on the O'Hare based airlines is tantamount to economic suicide. The newer low cost carriers are already devouring huge chunks of United and American's domestic markets. Making United and American into much higher cost airlines with the huge indebtedness of Chicago's proposed O'Hare expansion will simply accelerate the job loss and economic pain already endured by their employees.

But airlines and their employees are not the only victims of the economic profligacy inherent in Chicago's proposed O'Hare expansion. Consider the bondholders and the taxpayers. Inherent in any analysis of the economic impacts of the project — especially given the recent United default on its O'Hare bonds — is the impact of this huge debt on the people who purchase the bonds. Though the DEIS says it analyzes economic impacts, totally missing from the DEIS is any analysis of the financial feasibility of the project, the economic impact of the project on O'Hare airlines, or the economic impact on bondholders if the airlines are unable to pay this enormous debt.

But giving a "haircut" (*i.e.*, defaulting on the bonds) is not the only possible impact of this huge indebtedness. A similar situation to the proposed O'Hare expansion (albeit on a smaller scale) has occurred in St. Louis. There, St. Louis improvidently moved forward on a \$1 billion (as opposed to \$15 billion at O'Hare) runway project which the St. Louis based airlines cannot afford. The prospective high debt costs at St.

Louis have given them a double whammy – loss of flights and the unwillingness of new airlines to bring flights to St. Louis because of the high costs. One of the “solutions” now being widely discussed in St. Louis is the possibility of imposing a metropolitan-wide tax on St. Louis and its suburbs to subsidize the airlines and pay a portion of the airport expansion costs. Consider the tax impacts on residents in the suburbs of Cook, DuPage, Will, Lake and McHenry counties if the huge multi-billion dollar debt burden of the O'Hare expansion were placed on their backs.

**3. Alternatives.** There are a number of aspects of the DEIS alternatives analysis that defy reality.

- **First**, the FAA compares the full OMP with other alternatives such as other airports but fails to identify alternatives to lesser scale projects such as OMP Phase One. For the reasons set forth above (and others which I will address in my formal comments letter), the full OMP is little more than a pipedream — a fictional project that will never reach fruition. The only “real” project proposed by Chicago and the airlines is “Phase One”. If Phase One is the only project which Chicago and the airlines can reasonably afford, FAA must identify and consider alternatives on the premise that Phase One is all that Chicago and the airlines can or will build. Such a recognition would necessarily change FAA's alternatives analysis dramatically since FAA acknowledges that Phase One falls far short of the region's needs. Of necessity an alternatives evaluation in light of Phase One would require FAA to consider the use of other regional airports and the use of other hubs.
- **Second**, FAA's alternatives analysis dismisses the use of other regional airports without any supportable analysis. FAA's major premise appears to be that existing regional airports have not had much impact on O'Hare's market share and that consequently — in the face of capacity limits at O'Hare — other airports would not carry significant local traffic that would otherwise have used O'Hare.

Comment	Response
18	<p>In response to this comment, as well as others, the FAA has expanded the discussion of the financial feasibility of the OMP to <b>Chapter 1, Section 1.7</b>. Also, please see the response to comments 88-119 within <i>Campbell-Hill's April 6, 2004</i> comments on the DEIS, document number 050406_37, beginning on page U.4-558 of this appendix.</p> <p>With regard to the possibility of St. Louis imposing a metropolitan-wide tax, the FAA understands that no local tax dollars or revenue are being used for their expansion project, see <a href="http://www.lambert-pmo.org/id39.asp">http://www.lambert-pmo.org/id39.asp</a>. Should any such tax be levied, this would reflect the will of local communities in the St. Louis area.</p>
19	<p>OMP Phase I was assessed by the FAA in the Draft EIS, designated as Alternative B. Alternative B was found to not meet the purpose and need. Alternative B reduces delay, but not nearly as well as other O'Hare Development alternatives. Based on simulation modeling, it appears that Alternative B is least effective in accommodating projected demand and does not alleviate the existing disparity between VFR and IFR capacity. For further information see <b>Section D.7, Appendix D</b> of the EIS. Alternative B also requires future terminal facilities to be separated from existing terminal facilities by an active runway (Runway 14R/32L). Alternative B was therefore eliminated from further consideration. Please see <b>Chapter 3</b> of the EIS for the full context of this determination.</p>



But the actual experience of Midway shows that other regional airports can (and have) accommodated increasing shares of local traffic with Midway going from virtually zero percent in 1979 to more than 30% today. With Midway rapidly reaching capacity, there is no reason why other airports such as the new South Suburban airport or Milwaukee, Rockford or even Gary could not carry the local traffic shortfall not served by a capacity limited O'Hare.

- **Third**, this use of other airports alternative must be considered as a "blended alternative" even with the full OMP because it is clear that the full OMP — using either of the more current FAA official forecasts (*i.e.*, the 2003 or 2004 Terminal Area Forecasts ("TAF")) as opposed to the much lower 2002 TAF used in the DEIS — reveals the fact that the full OMP will be out of capacity either at the time it opens or within a few short years after it opens. This major capacity shortfall by the full OMP necessarily requires FAA to consider the use of other regional airports to handle traffic O'Hare cannot handle as a "hybrid" alternative in order for the regional traffic demand to be met. FAA's summary rejection of other local airports is without any logical or empirical justification.
- **Fourth**, it is clear that other hubs can and have been used to accommodate transfer traffic. American and United have in the past and will in the future transfer connection routes between their other hubs and O'Hare. Other transfer traffic can be accommodated by other hubs of other airlines. Again FAA's summary rejection of other hub airports is without any logical or empirical justification.
- **Fifth**, the FAA must consider the use of demand management as a realistic component of a "hybrid" alternative that combines some version of O'Hare (*e.g.*, existing O'Hare, or some additional runways, or the full OMP) with demand management and use of other airports. There is no question that FAA has the authority and the responsibility to prevent irrational and wasteful use of scarce

Comment	Response
20	The FAA conducted a comprehensive analysis of the use of other airports as an alternative. The use of other airports examined the use of other mid-continent hubs as well as the use of other regional airports, see <b>Chapter 3</b> and <b>Appendix C</b> of the EIS. Also, please see the FAA's response to <i>Campbell-Hill's April 6, 2005</i> comments on the DEIS, specifically, comments 120-140, beginning on page U.4-581. where the same issues are addressed by FAA in greater detail.
21	The FAA respectfully disagrees that "the full OMP will be out of capacity either at the time it opens or within a few short years after it opens." Please see the FAA's responses to <i>Campbell-Hill's April 6, 2005</i> comments on the DEIS, specifically, comments 43-87, beginning on page U.4-525, where the same issues are addressed by FAA in greater detail.  The FAA did consider the use of other regional airports within a "blended alternative" as requested, please see <b>Chapter 3</b> of the EIS.
22	Please see response to comment 20.

airport and airspace facilities. Indeed, the current FAA scheduling order in effect at O'Hare shows that unacceptable levels of delays can be addressed simply by the stroke of a pen. Moreover, O'Hare with the demand management techniques now in place at O'Hare should be considered the base-line for consideration of the existing O'Hare with other alternatives.

- **Sixth**, one of the central premises of FAA's rejection of other realistic alternatives is the unsupported claim that FAA has no current legal power to cause traffic growth to occur at other airports rather than at O'Hare. On the contrary FAA has ample power to cause traffic growth to be reallocated between O'Hare and other local and hub airports. FAA has both the power of the pen and the power of the purse. FAA can use its power of the pen to impose demand management techniques to control undesired levels of traffic at O'Hare. FAA can also make decisions not to issue discretionary AIP grants which will have the effect of limiting growth at O'Hare and sending traffic growth to other local and other hub airports.

**4. FAA's Refusal to meet its responsibilities under the Free Exercise of the First Amendment and the federal Religious Freedom Restoration Act.** Inexplicably — despite its earlier promise to do so — FAA has refused to address its responsibilities under the Free Exercise Clause of the First Amendment and the federal Religious Freedom Restoration Act. These two laws — one constitutional and one statutory — have very simple requirements and prohibitions.

If a governmental project — here OMP — will cause substantial injury to religious practices and beliefs then the government is prohibited from undertaking the project unless the government can affirmatively demonstrate: 1) that there is a "compelling governmental need" for the project and 2) that there is no alternative to meeting that governmental need without causing the injury to the religious practices and beliefs.

Comment	Response
23	With regard to congestion management alternatives, the FAA evaluated the use of congestion management in the DEIS, see <b>Chapter 3, Section 3.2.2.2</b> .  In addition, the FAA has evaluated the commenter's proposals in a new <b>Section 3.6</b> in <b>Chapter 3</b> .
24	Similar comments have been raised by other commenter's in greater detail, please see the FAA's response to <i>Karaganis-Cohn's April 6, 2005</i> comments on the DEIS, specifically, comments 106-143, beginning on page U.4-439.  Also, please see the FAA's response to <i>Campbell-Hill's April 6, 2005</i> comments on the DEIS, specifically, comments 120-140, beginning on page U.4-581. where the same issues are addressed by FAA in greater detail.
25	Please see the response to this comment on page U.2-45.

Here there is no question that the OMP — including Phase One — will cause serious injury to the religious beliefs and practices of the families and religious members whose loved ones are buried at St. Johannes Cemetery and Rest Haven Cemetery. The OMP calls for the destruction of sacred graves; and the religious beliefs of the church groups that founded and maintain the cemeteries hold that these graves are sacrosanct and must be preserved without violation until Judgment Day.

Nor is there any question that Chicago has “targeted” these two religious cemeteries for discriminatory treatment not inflicted on any other religious institutions in the State of Illinois. In what can only be considered a perversion of the Illinois Religious Freedom Restoration Act (a law that was intended to protect religious freedom) Chicago convinced to Illinois legislature to add a new section to Illinois RFRA — a section that expressly states that these two religious cemeteries (and only these two religious cemeteries out of all religious institutions in the state) shall no longer have the protection of Illinois RFRA.

There is no question therefore that the First Amendment's Free Exercise of Religion Clause applies here and that Chicago is trying to destroy the constitutional religious rights of the St Johannes and Rest Haven congregations.

Moreover, FAA cannot, like the Romans in the days of Pontius Pilate, simply avoid responsibility by saying that the constitutional injury is being caused by Chicago and not the FAA. FAA is complicit with Chicago's constitutional violations on several levels. First, Chicago is seeking FAA's financial assistance and approval of other federal financing tools (*e.g.*, Passenger Facility Charges). FAA's financial assistance for the destruction of these religious cemeteries makes FAA and FAA officials knowingly complicit and participants in the constitutional violation.

Moreover, FAA has additional federal religious statutory responsibilities which restrict FAA's ability to: 1) either approve the OMP and the destruction of these religious cemeteries or 2) to provide funding assistance for their destruction. FAA has

statutory responsibilities under the federal Religious Freedom Restoration Act that are virtually identical to those of the First Amendment Free Exercise Clause. Under the federal RFRA statute FAA is prohibited from funding or approving any project that would (as with OMP) involve serious injury to religious practices or beliefs unless FAA can affirmatively demonstrate that: 1) there is a compelling governmental need for the project and 2) that there are no alternatives to meet that need which would not cause injury to the religious practices or beliefs.

Despite the clear prohibitions and protections of the First Amendment Free Exercise Clause and the federal RFRA, FAA has been derelict in its duty. There is no analysis whatsoever of the First Amendment and federal RFRA issues in the several thousand page EIS.

Moreover, for almost two years, the FAA has repeatedly stonewalled representatives of the religious cemeteries when these representatives have respectfully asked FAA to comply with the law. Indeed, while stonewalling the religious communities, FAA's response has been to narrow its choices down to three O'Hare "alternatives" — and all three call for destruction of these cemeteries.

FAA can run, but it cannot hide, from its constitutional and federal RFRA responsibilities to protect the religious practices and beliefs from the blatant destruction of these religious cemeteries. Clearly, the most basic analysis under either the First Amendment standard or the federal RFRA standard will dictate that FAA and Chicago are prohibited from destroying these religious cemeteries. Neither FAA nor Chicago can demonstrate any compelling governmental need to destroy these cemeteries and neither FAA nor Chicago can demonstrate that there are no alternatives (alternatives that would not destroy the religious cemeteries) to meet that objective.

It is my considered belief that the federal courts will find that any proposed O'Hare project which destroys the religious cemeteries and the access routes to those

religious cemeteries is barred by the Free Exercise Clause of the First Amendment and the federal RFRA statute.

### CONCLUSION

It is clear that FAA has tried to paper over the severe technical, financial and constitutional problems afflicting Chicago's proposed O'Hare expansion by filling several thousand pages with maps, pictures and texts that simply ignore the central problems. This project cannot go forward in its present form — either as the full OMP or as Phase One.

I will have more detailed comments in my written submission filed at the close of the comment period.

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Comment	Response
25	In response to this comment and others, the FAA has added <b>Section 5.22</b> to <b>Chapter 5</b> of the EIS for the FAA's discussion of legal issues involving potential relocation of St. Johannes and Rest Haven Cemeteries.
26	The FAA disagrees with the commenter's assertion and hopes the responses above clarify the issues raised within this statement as well as the written comments that precede it in this document.

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## United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240

MAR 23 2005

APR 15 2005



ER 05/60

Mr. Philip Smithmeyer  
Chicago Airports District Office Manager  
Federal Aviation Administration  
2300 East Devon Avenue  
Des Plaines, Illinois 60018

Dear Mr. Smithmeyer:

As requested, the U.S. Department of the Interior (Department) has reviewed the draft Environmental Impact Statement (EIS) for the **O'Hare Modernization Project** – Major Development at Chicago O'Hare International Airport, Des Plaines and DuPage River Watersheds, Cook and DuPage Counties, Illinois. The Department offers the following comments and recommendations for your consideration.

**GENERAL COMMENTS**

Overall, the draft EIS is thorough, well written, and extremely detailed. Although a preferred alternative has not been chosen for this project (one will be identified in the final EIS), the three build alternatives are essentially the same and would result in the same environmental impacts. All three build alternatives would result in greater environmental impacts than the No-Action alternative. The alternatives retained for detailed consideration include the No-Action Alternative (Alternative A) and the three build alternatives (Alternatives C, D, and G). Alternatives C, D, and G are similar in their layouts and impacts to resources. A blended alternative (a combination of pieces from alternatives that do not rely on airport development, such as consideration of use of other regional airports, coupled with a lesser amount of airport development) was also considered as a way to reduce the amount of development. The Federal Aviation Administration (FAA) has not determined which alternative would be chosen, however, it is likely to be one of the build alternatives since the No-Action Alternative does not satisfy FAA's purpose and need. The FAA has noted a determination would be made after the comment period on the draft EIS. This determination needs to be documented in the final EIS.

Mitigation planning is not complete, so a thorough assessment of the project's impacts, taking into consideration compensatory mitigation proposed to offset unavoidable project impacts, cannot be done at this time. Additional review of the public notice and supplemental public notice from the U.S. Army Corps of Engineers (USACE) for proposed wetland impacts and compensatory wetland mitigation will be completed by the U.S. Fish and Wildlife Service (FWS) as part of Clean Water Act section 404 review

Comment	Response
1	The comments on the alternatives analysis and the EIS in general are noted. The FAA notes the Department's statement that "the draft EIS is thorough, well written, and extremely detailed." In the Final EIS, the FAA has identified Alternative C as the Preferred Alternative, and documentation of the reasons for FAA's identification of Alternative C as the Preferred Alternative is also provided. Please see <b>Chapter 3, Section 3.7</b> .
2	Comment noted. Since publication of the Draft EIS, FAA has continued to coordinate extensively with the Fish and Wildlife Service, the USEPA, the Illinois EPA, and the Army Corps of Engineers in order to identify appropriate mitigation for project-related Waters of the U.S. and wetlands losses. The FAA has addressed the Department's comments in the following responses, some including revisions to the Draft EIS.

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process. Even though the draft EIS is thorough, the Department has recommendations that should be included in the final EIS in order to make it more complete.

#### SECTION 4(f)/6(f) COMMENTS

Under consideration here are the Federal actions required to support a proposal by the city of Chicago (City) to modernize Chicago O'Hare International Airport (O'Hare). The FAA is the lead agency for the project. The FAA is being asked to approve an amendment to the City's Airport Layout Plan (ALP) and is seeking Federal funding for improvements to address existing and future delay and capacity problems. According to the executive summary (p. ES-1), the other actions under consideration are:

- . Establishment of air traffic control and airspace management procedures designed to affect the safe and efficient movement of air traffic to and from the proposed runways, as well as in the airspace surrounding the airport.
- . Establishment of flight procedure modifications.
- . Certifications as to the safety of instrumentation, procedures, and airfield operations.
- . Installation and/or relocation of navigational aids associated with the proposed new and relocated runways.

Through a screening of potential alternatives, five action alternatives, a blended alternative, and the No-Action Alternative were carried through the analysis. Under all build alternatives, several parcels of land would be acquired. The draft EIS discusses properties within the study area eligible to be considered under Section 4(f) of the Department of Transportation Act of 1966 (48 USC 1653(f)), and section 6(f)(3) of the Land and Water Conservation Fund Act (L&WCF; 16 USC 4601-8(f)(3)). The properties to be directly impacted by the build alternatives include five historic properties, two cemeteries, a farmstead, an abandoned gas station, and a geodesic dome residence. A historic school, Green Street School in Bensenville, would be directly impacted only by one build alternative (Alternative C). Also, included as Section 4(f) resources directly impacted by all build alternatives are two city parks (Schuster Park and Bretman Park in Bensenville), and one county forest preserve (Silver Creek).

Also considered are properties that have received assistance in the form of L&WCF grants. Assistance from L&WCF places restrictions on actions that convert the use of the property from recreational activities. Specifically, Section 6(f)(3) states:

"No property acquired or developed with assistance under this section shall, without the approval of the Secretary [of the Interior], be converted to other than public outdoor recreation uses. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to

Comment	Response
3	The FAA recognizes and concurs with the substance of the Department's commentary concerning the need for a Section 4(f)/6(f) Evaluation. The FAA issued a Draft Section 4(f) and Section 6(f) Evaluation on May 20, 2005. The information requested by the Department was provided in that Evaluation. The Final Section 4(f) and Section 6(f) Evaluation is provided in this Final EIS in Appendix L.

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assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location."

The document identifies only Bensenville's Schuster Park as having received L&WCF assistance and will be directly impacted by all build alternatives.

The potential exists for indirect impacts to other properties, primarily from increased noise effects. Section 4(f) properties discussed as potentially affected by indirect impacts include a historic house and two recreational facilities.

The FAA has not identified a preferred alternative, and it has not yet completed the determinations of eligibility for inclusion in the National Register of Historic Places for all properties listed above. It would be premature for the Department to provide a complete statement on concurrence with any determination on Section 4(f) resources. The draft EIS states in several places that an evaluation of affects to these resources will be completed and reported in a Section 4(f)/6(f) Evaluation prior to the issuance of a record of decision on this project. The Department would only ask that, due to the complexity of some of the alternatives and the variable affects each may have, this evaluation be completed and sent to the Department early enough so we may have meaningful input into the decisions to be made.

With the information available at this point in the study, the Department could possibly concur with a determination there are no prudent or feasible avoidance alternatives, each of the proposed alternatives would result in impacts to the section 4(f)/6(f) properties, and there are none that would avoid impacts to the identified properties. The Department could not agree with measures to minimize harm to Section 4(f)/6(f) resources since the mitigation discussion in the document is premature. The mitigation presented in the draft EIS is generalized and not specific to the resources involved, and none of the consultations necessary to determine the acceptability of these measures have been completed. We will reserve final judgment until the FAA completes the evaluation process.

#### SPECIFIC COMMENTS

##### Affected Environment

Section 4.4.3.2, Wetlands and Waters of the US: This section mentions the February 2000 Chicago O'Hare International Airport Delineation of Wetland and Floodplain Areas prepared by Harza Environmental Services (which is included in appendix N of the draft EIS). Exhibits 4.4-2 and 4.4-3 show all wetlands and other waters of the U.S. onsite. We concur with these exhibits. However, the wetlands labeled NW26 through NW30 on exhibit 4.4-2 are erroneously labeled as SW26 through SW30 on the Harza delineation maps (on exhibits 5-3 and 5-5). This should be corrected in the final EIS to provide consistency and clarification of the wetlands identified onsite.

Comment	Response
4	The exhibits 5-3 and 5-5 of the February 2000 Chicago O'Hare International Airport Delineation of Wetland and Floodplain Areas prepared by Harza Environmental Services is a previously published document and cannot be changed by FAA itself. However, FAA takes note of the Department's comments on this matter, and we have adjusted our records accordingly. As the Department noted, <b>Exhibits 4.4-2 and 4.4-3</b> in the Draft EIS and the Final EIS are correct.

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**Environmental Consequences**

Noise: This section discusses noise impacts on land use areas, which includes public parks. However, there is no discussion of noise impacts on natural areas in the vicinity of the airport, which include forest preserves such as the Des Plaines River Forest Preserve and the Ned Brown Forest Preserve. Noise impacts and their effects on wildlife resources in these areas should be considered and discussed in this section of the final EIS.

Biotic Communities- Sections 5.10.1.1 and 5.10.2, Regulatory Context and Baseline Conditions: These sections discuss FAA's position on land use practices that attract or sustain populations of hazardous wildlife and resulting bird strikes. Information regarding O'Hare's control of wildlife hazards is mentioned in this section and detailed information regarding this issue is found in appendix N, section N.1.5.1. The U.S. Department of Agriculture completed a biological assessment for O'Hare and a Wildlife Hazard Management Plan (WHMP), which was updated in 2002. These studies and the additional information found in appendix N would likely satisfy FWS requests made in earlier correspondence for studies to determine if wetlands onsite are attracting wildlife and creating potentially hazardous situations (the FWS letter can be found in appendix S of the draft EIS). These studies are also consistent with the Memorandum of Agreement (MOA) of 2003 between the FAA, FWS, and other agencies to address aircraft-wildlife strikes (based on advisory circular 150/5200-33A). The studies should also be included in an appendix in the final EIS.

These sections indicate the O'Hare complies with WHMP guidelines, which recommend that potential wildlife threat to aircraft are prevented by limiting the number and location of attractive habitats. Yet, at the bottom of page 5.10-4, it is stated the wildlife management staff estimates some 70,000 birds have been harassed by aircraft at O'Hare between 1999 and 2003, and not all bird-aircraft strikes are reported.

The U.S. Geological Survey (USGS) has recently developed research on environmental conditions resulting in aircraft-bird strikes. Application of the research is entered into an expert system (on CD-ROM) that provides information on probability of bird location by elevation, Universal Transverse Mercator location, and time of year to help flight personnel avoid costly bird strikes and enhance the safety of aircraft and passengers, as well as birds flying aloft in the vicinity. Birds could be a concern at the site if sucked into an airplane engine, especially on takeoff. Perhaps this computer software would be useful to O'Hare operations. Information about the CD availability can be retrieved from the USGS, <http://biology.usgs.gov>, under Coop Units, Utah Cooperative Fish and Wildlife Research Unit, or under Current Projects, aircraft-bird strikes.

Biotic Communities – Section 5.10.1.3, Methodologies: This section states the FWS requested field surveys to investigate the potential presence of three threatened or endangered species. In fact, the FWS requested surveys for only two species, the eastern prairie fringed orchid and the eastern massasauga. The survey conducted for small sundrops, which is indicated by a footnote as having been requested by the FWS,

Comment	Response
5	The FAA issued a Draft Section 4(f) and Section 6(f) Evaluation on May 20, 2005. The information requested concerning noise impacts on natural areas in the vicinity of the Airport was provided in that Evaluation. Wildlife resources within these parks and forest preserves have been historically subjected to noise without known effects. The Final Section 4(f) and Section 6(f) Evaluation is provided in this Final EIS in <b>Appendix L</b> .
6	The Department of Agriculture's 2002 updated biological assessment and Wildlife Hazard Management Plan has been included in <b>Appendix N</b> to the Final EIS.
7	The corrections requested have been made to the Final EIS.

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was not requested by the FWS since the species is a State-listed species but not a Federally listed or proposed species. This distinction has been made in previous FWS correspondence with Harza in a letter found in appendix T of the draft EIS. Additionally, the eastern massasauga is not a federally threatened or endangered species. It is a candidate species for Federal listing and any reference involving the FWS should indicate its correct status. Similar inconsistencies are found in the threatened and endangered species section. These corrections need to be made in the final EIS.

Biotic Communities – Sections 5.10.2 and 5.10.3, Baseline Conditions and Alternative Analysis: These sections discuss existing ground cover at O'Hare and the proposed amounts for each build alternative. Of importance is the amount of existing mowed grass (which is the second most common ground cover after buildings/paved surfaces) and the various amounts of mowed grass proposed for each build alternative. It has been indicated in numerous publications, such as Advisory Circular 150/5200-33A, that large areas of mowed turf grass and other similar land-use practices can attract wildlife (e.g., Canada geese) and increase the risk of bird strikes. The FAA should determine the need for these additional mowed grass areas and be consistent with the Advisory Circular and the WHMP. Other existing and proposed land-use areas should also be consistent with the Advisory Circular.

Wetlands – Section 5.12.2, Baseline Conditions: This section mentions the wetlands onsite are providing relatively few beneficial wetland functions and values, including values for wildlife habitat (this assessment is also noted in appendix N). Although the wetlands onsite have been disturbed from human activities, they are providing valuable wildlife habitat in an extremely altered landscape. The value and importance of the wetlands onsite, especially those on the west side of the airport, can also be seen in spatial relationship to other natural areas within O'Hare's vicinity. The value of the wetlands onsite is magnified due to their isolation from other natural areas because of past alterations in the landscape within O'Hare's vicinity.

This section also mentions that one of the primary functions of the O'Hare's wetlands is habitat for common wildlife species. We agree the wetlands onsite are providing habitat for common wildlife species (as noted by bird, mammal, and other surveys found in appendix N). However, several of the bird species listed in table N-7 are in need of special conservation attention. Of the bird species listed in table N-7, upland sandpiper, Wilson's phalarope, short-billed dowitcher, and stilt sandpiper are listed on both the FWS Region 3 Fish and Wildlife Resource Conservation Priorities (RCP) list, and the FWS Birds of Conservation Concern 2002 list. The black-crowned night heron, red-shouldered hawk, northern pintail, eastern meadowlark, greater yellowlegs, and northern flicker are also listed on the RCP list. All of these bird species are listed due to their rare and/or declining status and, therefore, have a need for special conservation attention. Additionally, several of the waterfowl listed in table N-7 are listed on the RCP list for their recreational/economic value. These waterfowl species are blue-winged teal, northern pintail, mallard, and wood duck. Birds listed on the FWS RCP list and Birds of Conservation Concern 2002 list should be noted in the appropriate place in the text of

Comment	Response
8	The amount of mowed grass would be less with each of the Build Alternatives compared to the No Action Alternative.
9	FAA takes note of the Department's comments regarding species that are, or which may be, located in and around the Airport. The Final EIS includes appropriate textual coverage as suggested by the Service's comments on this matter.

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the final EIS and should be identified as such in table N-7. Impacts to habitat onsite would result in the loss of habitat for species that are residents and for species that stopover during their migrations.

Two of the larger wetlands onsite, NW28 and SW15 (first and fourth largest, respectively), are noted in this section to be the only wetlands onsite exhibiting Natural Areas Rating Index (NARI) scores greater than 20. These NARI scores indicate above average floristic quality. In addition, these scores qualify these wetlands as High Quality Aquatic Resources (HQAR) per the USACE Chicago District Regional Permit Program (RPP). These HQARs usually require higher mitigation ratios, therefore, these wetlands should receive higher mitigation ratios than the proposed 1.5:1.0 ratio. We recommend at least a 3.0:1.0 ratio, and this needs to be reflected in the final EIS.

Wetlands – Sections 5.12.2 and 5.12.4.1, Baseline Conditions and Conceptual Wetlands Mitigation Plan: Table 5.12-1 and 5.12-4 (and Tables N-10, N-11, and N-17 in appendix N) raise questions regarding cover types and mitigation ratios of the wetlands onsite. Regarding cover type, the applicable tables indicate that there are no forested wetlands onsite. Footnotes note that approximately 21.7 acres of the wetlands onsite were described as palustrine forested (PFO) wetlands by Harza in their 2000 wetland delineation. All wetlands were classified by cover types according to the "Classification of Wetlands and Deepwater Habitats of the United States" by Cowardin et al. (1979). However, several tables imply the USACE indicated that the originally described PFO wetlands did not meet their criteria for PFO wetlands and that these wetlands have been classified as palustrine scrub-shrub (PSS) wetlands for the purposes of analysis.

Staff from the FWS Chicago Field Office has been on tours of the wetlands onsite and agree with the Harza original determination that PFO wetlands are located onsite, based on the Cowardin definition. The Cowardin classification system has been in general use since the late 1970s and is widely recognized as a professional standard for classifying wetland types. Therefore, we recommend the final EIS properly identify these wetlands as PFO, as originally prepared by Harza. For example, wetlands NW28 and SW15 were inspected on tours by FWS staff and contained a mixture of mature woody vegetation throughout these wetlands including silver maple, green ash, and American elm. Furthermore, section N.1.4.2 in appendix N states that wetland NW28, which has the highest NARI rating onsite, is wooded and contains silver maple, crack willow, green ash, and American elm. This section also notes SW15 has wooded portions. In addition, proper classification of the PFO wetlands onsite should result in higher mitigation ratios (e.g., 3.0:1.0) for these resources. These increased ratios need to be reflected in the final EIS.

In regard to NW28, there are also discrepancies between the Harza description (noted above) and the Harza 2000 wetland delineation. In table 2 of the 2000 wetland delineation, all of NW28 is given a cover type of palustrine emergent (PEM) wetland that is contradictory to the Harza description in section N.1.4.2 and the FWS wetland inspection. This wetland may contain portions that are PEM, however, portions that were inspected by FWS consisted of PFO wetland. As with the other PFO wetlands,

Comment	Response
10	FAA takes note of the Department's comments on this matter. In response to these comments, and similar comments from other agencies, FAA undertook extensive consultation with the US Fish and Wildlife Service, the USEPA, the Illinois EPA, and the Army Corps of Engineers concerning appropriate mitigation for project-related impacts on non-wetland Waters of the US and wetlands. The results of this consultation process are described and discussed in the Final EIS.

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this cover type should be corrected in the final EIS and a higher mitigation ratio should be required. The acreage total for PFO wetlands identified in table 2 of the 2000 wetland delineation is not consistent with the 21.7 acres of PFO wetlands mentioned in table 5.12-1 of the draft EIS. This could be due to the fact that the wetlands making up the additional acreage (based on FWS calculations) consist of PFO wetlands and at least one other wetland type. These wetlands need to be placed in their proper cover types or by whichever cover type represents the highest acreage.

#### Cumulative Impacts

Sections 6.3.9, 6.3.10, and 6.3.11, Biotic Communities, Endangered and Threatened Species of Flora and Fauna, and Wetlands: These sections discuss past, present, and foreseeable cumulative impacts on natural resources at the airport and other areas outside the airport which need to be considered in the cumulative impacts analysis as described in the National Environmental Policy Act (NEPA). Numerous reasonably foreseeable future actions are summarized in section 6.2.3.

Although all three sections discuss foreseeable impacts to these areas, each section concludes that until specific plans are known, it is not possible to quantify the specific cumulative impacts from the build alternatives and other regional projects on these natural resources. The FAA should describe, to the best of its ability, all of the possible impacts on these natural resources from all the reasonably foreseeable future actions, listed in section 6.2.3, in the final EIS.

Table 6-8: This table is a summary of cumulative effects from past, present, proposed, and reasonably foreseeable future actions on various resources. In particular, for effects on biotic communities, endangered and threatened species of flora and fauna, and wetlands, estimated cumulative effects on these resources all state that no additional significant cumulative effects are expected on these resources. We disagree with this conclusion. This conclusion is also contradictory to the statements in sections 6.3.9, 6.3.10, and 6.3.11 that note it is not possible to quantify the specific cumulative impacts from the build alternatives and other regional projects on these natural resources. With the substantial loss of natural resources projected to occur under proposed actions and the natural resources that could be impacted from reasonably foreseeable future actions, we believe the impacts would result in additional significant cumulative effects on natural resources. For example, in section 6.3.11, the potential impacts from the South Suburban Airport on wetlands are described as having the potential to affect 364.4 acres of wetlands. This should likely be considered a significant cumulative effect. The final EIS needs to reflect the significance of these cumulative effects or provide more discussion and analysis showing how the FAA arrived at these determinations of no additional significant cumulative effects.

#### Mitigation

Section 7.13, Wetlands: This chapter notes that appropriate mitigation measures would be provided in the final EIS. Section 7.13 discusses the regulatory guidelines

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Comment	Response
11	<p>The Final EIS provides, to the best of FAA's ability, a description of reasonably foreseeable cumulative impacts to biotic communities, endangered and threatened species, flora, fauna, wetlands, and other resource categories, see <b>Chapter 6, Cumulative Impacts</b>.</p> <p>The FAA notes that the environmental impact statement for the South Suburban Airport will address cumulative impacts which will include other projects in the area.</p>
12	<p>The Final EIS contains a thorough discussion of a Waters of the US and wetlands mitigation plan as developed in recognition of anticipated, project-related impacts. This plan was developed in consultation and close coordination with the US Fish and Wildlife Service, the USEPA, the Illinois EPA, and the Army Corps of Engineers. FAA will require the City to implement this plan.</p> <p>The comment on aircraft/wildlife strikes is noted. General wildlife groups were used to reference the most common involved wildlife species in aircraft/wildlife strikes as reported in the attachment to the MOA. Additionally, recent wildlife strike data at O'Hare as reported by the USDA, Animal and Plant Inspection Services, by species, is included in <b>Appendix N, Table N.1-1</b>.</p> <p>With regard to the request for the rationale for the determination of the 1.0:1.0 mitigation ratio for Cook County isolated wetlands, the FAA deemed this ratio appropriate for its purposes.</p>

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associated with the Clean Water Act section 404 permit process. This chapter also indicates that mitigation plans are still being developed. Given that 153 acres of wetlands and other waters of the United States would be adversely affected, the FWS recommends at least 414 acres of wetland mitigation be provided based on mitigation ratios discussed in the draft EIS or recommended in the comments in this letter. Only 131 acres (for DuPage County wetlands) have been specifically identified. Prior to completing the final EIS, identification of all mitigation sites and general mitigation concepts should be completed.

It is noted in this section that the most common type of aircraft/wildlife collisions are those with birds and the section specifically mentions gulls, waterfowl, and raptors (information obtained from the MOA). This section (and any other applicable sections) needs to indicate gulls refer to all species, and hawks refer primarily to red-tailed hawks. In regard to waterfowl, Canada geese are responsible for most aircraft/wildlife collisions. These changes should be made to be consistent with table 1 of the MOA and should be included in the final EIS.

As noted in this section, the City's Conceptual Wetlands Mitigation Plan is included within the Individual Permit Application provided to the USACE; and the FWS will provide additional review on the related public notice and supplemental public notice. Overall, the FWS concurs with the proposed wetland mitigation credits and ratios shown in table 5.12-4 and table 7-1 (besides the changes recommended for the PFO wetlands onsite, as previously mentioned). However, the FWS is not sure how the 1.0:1.0 mitigation ratio for Cook County isolated wetlands was determined. An explanation of this determination needs to be in the final EIS.

The draft EIS provides several site selection criteria. We support an initial policy preference for in-kind replacement for impacted wetlands; however, out-of-kind wetlands that target FWS trust resources of conservation concern, particularly migratory birds and birds listed on the FWS' RCP and Birds of Conservation Concern 2002 lists, should also be included in the selection criteria. For example, the majority of wetlands onsite are PEM-shallow wetlands. The creation or restoration of PEM-deepwater wetlands and hemi-marsh would be beneficial to waterfowl and other marsh birds that are of greater conservation importance. These selection criteria should be added to this section and section 5.12.4.1 in the final EIS. In-kind replacement for PFO wetlands should also be discussed in the final EIS. The mitigation plan and site selection criteria needs to include provisions for long-term management with an endowment to provide funding so a local entity (e.g., local forest preserve districts) with experience in wetland management and maintenance can be acquired. Maintenance and management for these areas needs to be done in perpetuity.

Mitigation proposals for potential mitigation sites are currently being reviewed by the FWS as a part of the Mitigation Review Team (MRT). The MRT has chosen six sites, on a preliminary basis, to undergo extensive review. The MRT may, at a future date, request a supplemental list of mitigation sites from the City for review if the preliminarily chosen sites are not satisfactory. Several of the chosen sites are for creek restoration

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projects. In order to be consistent with the site selection criteria of in-kind replacement, there should be less of an emphasis on creek restoration (as the majority of the wetlands onsite are PEM wetlands) and the wetlands onsite needs to be mitigated in-kind as PEM wetlands.

#### Appendix N, Biological and Water Resources

The aforementioned changes referencing appendix N need to be made in applicable sections of appendix N in the final EIS. In addition to the previously mentioned changes, we have the following recommended changes:

Section N.1.1, Wetlands: The Wildlife and Wildlife Hazards portion of this section indicates wetland and water birds (gulls, waterfowl, and wading birds) accounted for almost two-thirds of bird strikes nationwide noted in the Advisory Circular. These birds are found at the wetlands on the airport. However, gulls, particularly ring-billed gulls, are not attracted to the wetlands onsite, and Canada geese, which are involved in the majority of waterfowl bird strikes at the airport, are primarily attracted to the mowed grass areas at the airport. This section should be updated in the final EIS to include this information.

Section N.1.5.2, Birds and Table N-7: For three of the listed bird species, table N-7 incorrectly fails to indicate that the species are subject to the Migratory Bird Treaty Act (MBTA). These three species are: cedar waxwing, northern pintail (not "common pintail," as listed), and American golden-plover (not "lesser golden-plover," as listed). These three species are protected under the MBTA. In the final EIS, table N-7 should be corrected to indicate this fact and the number of bird species identified as being protected by the MBTA that have been observed at the airport should be changed from 64 identified species to 67 identified species.

Section N.1.5.3 and N.1.5.5, Mammals and Threatened and Endangered Species: These sections erroneously describe suitable roost trees used by the Federally endangered Indiana bat by limiting the characteristics of such trees to dry cavities and hollow trees. The descriptions also state the lack of hardwood trees with dry cavities and the fact no mature forests are found on the airport limit habitat availability for bats. Although we agree Indiana bats are not likely present at the airport, due to isolation and lack of connectivity of the wooded areas onsite to larger forested areas such as the Des Plaines River Forest Preserve, there is suitable habitat present within the wooded areas on the airport. During the summer, Indiana bats primarily roost under the exfoliating bark of suitable roost trees and the roost trees used are not limited to specific hardwood tree species (such as the hickories, walnuts, and oaks listed). Although they do roost in the cavities and crevices of trees, they are more likely to roost under the loose bark of suitable trees. This additional information needs to be provided in the final EIS for these sections and other sections describing Indiana bat roosting habitat.

Comment	Response
13	The Final EIS has been updated to include this information.
14	The Final EIS has been updated to include this information.
15	The Final EIS has been updated to include this information.
16	The Final EIS has been updated to include this information.

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**SUMMARY COMMENTS**

The Department has a continuing interest in working with the FAA to ensure that impacts to resources of concern to the Department are adequately addressed. For matters related to section 4(f), please contact the Regional Environmental Coordinator, Nick Chevance, National Park Service, Midwest Regional Office, 601 Riverfront Drive, Omaha, Nebraska 68102, telephone (402) 661-1844. For issues related to section 6(f), please contact Jim Krejci at the same address, telephone 402-661-1560. For matters related to fish and wildlife resources and threatened and endangered species, please continue to coordinate with the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 1250 South Grove, Suite 103, Barrington, Illinois 60010, telephone 847-381-2253. For matters related to USGS comments, please contact Brenda Johnson, Office of Environmental Affairs Program, USGS, 423 National Center, Reston, Virginia, 20192, telephone 703-648-6832.

We appreciate the opportunity to provide these comments.

Sincerely, .



Willie R. Taylor  
Director, Office of Environmental  
Policy and Compliance

cc:  
Michael W. MacMullen  
Airports Environmental Program Manager  
Federal Aviation Administration  
Chicago Airports District Office  
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Des Plaines, Illinois 60018

Comment	Response
17	The FAA appreciates receipt of the Department's comments and believes the Final EIS provides a thorough response to those comments. FAA looks forward to continuing its productive relationship with the Department in the future.

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